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CHANDIGARH ADMINISTRATION
DIRECTORATE OF AYURVEDA, YOGA & NATUROPATHY,
UNANI, SIDDHA & HOMOEOPATHY

Notification

The 31st March, 2022

No. A&H-I-2021-22/4356.—In supersession of Notification No.A&H-I-2021-22/478, dated 4th June, 2021, a Committee of the following Officers of Health and AYUSH Department, UT Chandigarh to check the Bogus Medical Practitioners in the Union Territory, Chandigarh and to get the cases registered/ follow up, is hereby constituted, with immediate effect, till further orders :—

- | | | | |
|----|--|----|---------------|
| 1. | Dr. Mrs. Manju Shree,
Assistant Director Homoeopathy/
Incharge District Homoeopathic
Dispensaries | .. | Nodal Officer |
| 2. | Dr. Vandana Mohan,
DFWO, Govt. Multi Speciality
Hospital, Sector 16, Chandigarh. | .. | Member |
| 3. | Dr. Rajiv Kapila,
Senior Ayurvedic Physician
AYUSH Department, U.T.,
Chandigarh. | .. | Member |

Chandigarh :
6th March, 2022

YASHPAL GARG, IAS,
Secretary Health,
Chandigarh Administration.

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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification

The 21st March, 2022

No. 13/1/9839-HII(2)-2022/4100.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 66/2015 dated 12.01.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

LALEETA DEVI W/O SHRI KALIKA PARSSAD, HOUSE NO. 98, BLOCK 'F', LABOUR COLONY NO. 4, INDUSTRIAL AREA - I, CHANDIGARH. (Workman)

AND

ALLIED INDUSTRIES UNIT - II, PLOT NO. 136/140/90, INDUSTRIAL AREA - I, CHANDIGARH THROUGH ITS PROPRIETOR/OCCUPIER & MANAGER (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that she was appointed by the management with effect from 15.06.2010 as Helper and worked continuously up to 31.12.2014. The management was entirely satisfied with her work and conduct. She was drawing wages of ₹ 4,900/- per month. She was terminated on 01.01.2015. According to notification of minimum wages, the workman was entitled for ₹ 7,838/-. The management had not complied with the provisions of the Factory Act, The Minimum Wages Act, The Payment of Wages Act and The Bonus Act. The workman made several complaints to the management. The management had issued her ESI Card after more than one year and not from actual joining. The management had not deposited deducted ESI Contribution regularly in the ESI Office as per rule. The management had not provided allowed leaves with wages to the workman according to "The Punjab Industrial Establishment National and Festival Holidays and Casual and Sick leaves Act 1965". The workmen are entitled for fourteen days sick leaves with wages, seven days casual leaves 15 days earned leave with wages annually and leaves Cards. The management had not paid single wages of worked overtime to the workman and co-workmen, which is clear cut violation of The Minimum Wages Act on the part of management. The management always needs approximately about 22 workmen with power use, but deliberately kept conceal the original strength of workmen and more than half workmen kept away from the original record with aim to deprive them from their legal rights under the labor law and other liability. The management knowingly had not issued appointment letter and designation letter to the workman and co-workmen. Attendance marked in Exercise Note Book in the workshop like as rate of wages, designation, machine wise allotted job and production, working hour, over time hour, working Days, leaves(without wages) and calculation wages etc of factual position was written in this note book. Every month new Exercise Note Book started and old copy kept away from the workmen and original Attendance and Wages register maintained and kept at unfounded place away from the factory. The management never allowed to mark her attendance by signature in original attendance nor issued Attendance Card. The management had paid wages after obtaining signature in blank voucher and blank paper without date. The management had not issued wages slip or receipt of deducted of ESI contribution. The management had not issued any memo, charge sheet, nor conducted any enquiry in any matter before termination till date, because the workman was not at fault. The workman requested to concerned officer number of times to take her back on duty verbally or in writing but management did not hear her requests. This is gross violation of principles of natural justice. She is totally unemployed after termination until. The workman is facing all difficulties of unemployed person including starvation. Despite submitting demand notice and reporting for duty the management on every

occasion refused to allow duty and told that they will teach her lesson and neither she can do duty nor Court can grant her any benefits. During conciliation proceedings never filed reply of demand notice nor gave any statement due to negative approach of management settlement could not arrived rather the management had never appeared in conciliation proceedings according to law and procedure despite several dates by this way the management pushed in the workman unwanted litigations showing the power to the workman. According to pre-condition of 25-F of ID Act and other provisions Labour Law at the time of refusal of work by verbal order under noted amount is payable with condition of 25-G & 25-H of the ID Act.

Sr. No.	HEADS	AMOUNT (IN RS.)
i)	Wages w.e.f. 01.12.2014 to 31.12.2014	7,838/-
ii)	Leaves with Wages which was not given (30 days)	7,838/-
iii)	Minimum Bonus@ 8.33% w.e.f. 01.04.2013 to 31.12.2014	13,500/-
iv)	Gratuity amount Section 4 of The payment of Gratuity Act	22,610/-
v)	Compensation according to Section 25-F of ID Act	19,595/-
vi)	Notice Pay According to Section 25 F of ID Act	7,838/-
vii)	Over Time 218 hours 01.07.2014 to 31.12.2014 under Section 59 of the Factory Act, 1948	14,239/-
Total		93,458/-

The management had not paid or offered notice pay in lieu of notice or compensation to the workman. The job of workman exists, as it is, till date and the junior workmen to the workman are still retained in service by the management. So, there is serious violation of Section 25-F, 25-G & 25-H of the ID Act. The termination order badly disturbed to the workman's family. The management knowingly not complying with the provision of Article 14, 16 and 21 of the Constitution of India during service of workman and badly infringed the above article and provision there under at the time of termination of workman. The management misused right and power of management to conceal the facts from the Government Departments for their wrong and illegal, which goes against the poor workman. Verbal termination order is illegal unjustified, *malafide* and violation of all the other provisions of ID Act so the workman is fully entitled for reinstatement with full back wages and continuity of services. Ultimately, it is prayed that the termination order be declared illegal and the workman be reinstated into service with continuity of services, with full back wages and all others applicable consequential benefits.

3. The management contested the case of the workman and filed written statement that the workman was working as Helper and appointed by the management in the month of June 2011 and had been absent from duty without any intimation or leave since 29.12.2014 and did not even respond to the notices dated 12.01.2015, 24.01.2015, 05.02.2015 and 19.02.2015 served upon her by the management to report to duty and explain the reasons of her unauthorized absence within the prescribed time period amounting to misconduct, but nothing was heard from her, instead she had approached the learned Assistant Labour Commissioner, Chandigarh and then this Court for reasons best known to her. She was drawing the wages of ₹7,950/- per month, which were more than the minimum wages. The Management has always complied with the statutory provisions and due to which there has not been any such complaint was ever made by the workman till date. The strength of 22 workman includes those other employees not covered under ESI scheme and was required when the management was a partnership firm and about 8 workmen employed by the management were covered under ESI scheme and since 02.01.2017 the partnership firm has been dissolved and the successor management M/s Allied Industries Unit - II is a sole proprietorship where only about 5 workmen are covered under ESI scheme. The workwoman has herself to blame for the situation she has been into as alleged by her. Rather the management had suffered

due to her long and unexplained absence from her duties amounting to misconduct for which she is liable to compensate the management and in the situation no Management is expected to or can be directed to take the workwoman back into the job as such workman or woman are always a liability, who can cause huge losses to the management by way of a ripple effect. The management gave ample opportunities to the workwoman to report to duty and give an explanation for her unauthorized absence which she did not choose to do, despite successful service of notices by the management on her on 4 occasions which concluded only one thing that the workwoman was not interested in the work of the management and had herself left the work for which the management cannot be held liable. The management never retrenched the workman from her service either verbally or in writing. She had willfully abstained and abandoned her work since 29.12.2014 for which, the management sent her a notice dated 12.01.2015 through ordinary post asking her to report back to duty within 7 days and to explain her reasons for absence from her duty, to which she did not reply. Another notice dated 24.01.2015 was sent to her through ordinary post reiterating the contents of the first notice and stating that if still she does not report to duty and files no reply strict action will be taken against her, in reply of which she neither joined her duty nor filed any explanation for her absence. Further, two more opportunities were given to the workman by the management when notices dated 05.02.2015 and 19.02.2015, both through registered, but she neither reported for duty nor filed any explanation for her unauthorized absence despite successful service of notices on 4 occasions. The workman had cooked up a story about requesting verbally or in writing to concerned officer number of times. The violation of Constitution provisions cannot be invoked before this Hon'ble High Court. The management had always complied with the statutory provisions. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of her case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed:-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. The workman also examined Shri Vivek Kumar Goyal - Branch Manager, ESIC Branch, Sector 29, Chandigarh as AW2. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Ashwani Mahajan - Authorised signatory as MW1 and closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

Issue No. 1

7. Onus to prove this issue was on the workman and to discharge the same, learned representative for the workman has examined the workman as AW1, who deposed that she was appointed by the management with effect from 15.06.2010 as Helper and worked continuously upto 31.12.2014. The management was entirely satisfied with her work & conduct. She was terminated on 01.01.2015. According to notification of minimum wages, notification she was entitled for ₹7,838/-. Copy of minimum wages rates is Exhibit 'W1'. The management had not complied with the provisions of The Factory Act, The Minimum Wages Act, The Payment of Wages Act and The Bonus Act. The management had issued ESI card to her after more than one year and not from actual joining. Copy of ESI card is Exhibit 'W2'. The management is not providing allowed leave with wages to the workmen according to The Punjab Industrial Establishment National and Festival Holidays and Casual and Sick Leaves Act, 1965. The management always needs approximately about 22 workmen but deliberately conceal the original strength of the workmen. She also deposed that the management knowingly not issued appointment letter, designation letter to her and co-workmen. Attendance was being marked in exercise note book and every month new exercise note

book was used. The management paid wages after obtaining signature in blank voucher and blank paper without date. She further deposed that the management had not issued any memo, charge sheet or conducted any inquiry before termination. She requested the concerned officer number of times to take her back on duty verbally or in writing but the management did not hear her requests. During conciliation proceedings never filed reply to the demand notice and never appear in conciliation proceedings. Copy of memo No.5343 dated 21.09.2015 is Exhibit 'W3'. She also deposed that the management had not paid or offered notice pay in lieu of notice or compensation to her. Her job still exists and junior to her were retained in service. There is serious violation of Section 25-F, 25-G & 25-H of the ID Act.

8. Learned representative for the workman also examined Shri Vivek Kumar Goyal - Branch Manager, ESIC Branch, Sector 29, Chandigarh as AW2, who proved the ESI record pertaining to the workman from 01.10.2010 to 30.09.2015 Exhibit 'AW2/1' to 'AW2/2'.

9. Learned representative for the workman has argued that the workman was appointed by the management as Helper on 15.06.2010 and she worked continuously upto 31.12.2014 when her services were terminated verbally. The services of the workman were terminated without issuing any notice, inquiry and retrenchment compensation. Though this Court has directed the management to produce the summoned record but the management intentionally did not produce the record to deprive the legal rights of the workman so adverse inference may be drawn against the management for not producing the record intentionally. Learned representative for the workman has relied upon citations **Bharat Sanchar Nigam Limited Versus Bhurumal, (2014)7 Supreme Court Cases 177; Habib Ullah Dar Versus Chairman & Others, 2006-II-LLJ 237 (J&K); Bhimrao Rambhau Abhang Versus Kohinoor Engineering Company, 2005-III-LLJ 606 (Bombay) and Mam Chand Versus Presiding Officer, Labour Court, Ambala & Others, CWP No. 16462 of 2012 decided on 07.02.2018 by the Hon'ble Punjab & Haryana High Court.** He prayed for deciding this issue in favour of the workman and against the management.

10. On the other hand, learned representative for the management examined Shri Ashwani Mahajan as MW1, who deposed that he is authorised signatory of M/s Allied Industries Unit - II, an unregistered partnership firm which had since dissolved on 02.01.2017 whereby all the assets and liabilities were taken over by Smt. Neena Mahajan W/o Shri Ashwani Mahajan, R/o House No.832, Sector 9, Panchkula, who is now the Proprietor of M/s Allied Industries, being sole proprietorship. The workman has no cause of action against him or its successor to file present claim statement as she had left the job of her own and has been guilty of misconduct. The workman appointed by him in the month of June 2011 and she had absent from duty without any intimation or leave after 29.12.2014 and did not even respond to the various notices dated 12.01.2015, 24.01.2015, 05.02.2015 and 19.02.2015 served upon her. He further deposed that he had always complied with the statutory provisions. The strength of 22 workmen includes those other employees not covered under ESI Scheme. The management had suffered due to her long and unexplained absence from her duties amounting to misconduct for which she is liable to compensate the management. No settlement could be arrived during conciliation proceedings due to greed of the workman as the whole claim has been made with the object of extorting more money. The violation of constitutional provisions cannot be invoked before this Court.

11. Learned representative for the management has argued that the partnership of the management firm has been dissolved and Smt. Neena Mahajan had taken over M/s Allied Industries and she is the sole proprietor of the firm. He argued that the necessary party has not impleaded in the present case. He further argued that the present case is not a case of termination rather it is the case of willful abandonment of duties. The workman had absented without any intimation and did not respond to the communications and never reported for duty. He prayed for dismissal of the present claim of the workman.

12. I have very thoughtfully considered the rival contentions of both the sides. The workman is aggrieved that her services were terminated illegally by the management whereas it is the stand of the management that the services of the workman were never terminated rather she had absented from her duties without any intimation. As per the averments of the workman she was appointed by the management on

15.06.2010 as Helper and worked continuously upto 31.12.2014 and she was drawing wages of `4,900/-and as per minimum wages rates notification she was entitled to `7,838/-. The workman had proved on record Memo No.5343 dated 21.09.2015 Exhibit 'AW1/1' whereby conciliation proceedings stands closed, postal receipt dated 27.01.2015 Exhibit 'AW1/2', ESI identity card Exhibit 'AW1/3', details of wages, working days of the workman as per ESI record Exhibit 'AW2/1' and returns of contributions of ESI Exhibit 'AW2/2' and copy of minimum wage rates for the period 01.10.2014 to 31.03.2015 Mark 'A'.

13. Perusal of the documentary evidence reveals that the workman had worked with the management from April 2011 to December 2014 with the management. Moreover, the management is not denying this fact that the workman had not worked with the management. Only argument addressed by the management is that the workman herself abandoned the job and she had not been terminated. The management had issued notices but the workman had not turned up. The partnership firm of the management has been dissolved and run by another partner solely. The workman has not impleaded necessary party.

14. Plea of the management is that the workman had left the job herself. They have already sent the notice 12.01.2015, 24.01.2015, 15.02.2015 and 19.02.2015 but she had not come present so the present case is not case of termination rather it is the case of abandonment of services. The management had examined Shri Ashwani Mahajan as MW1, who also reiterated the version and had stated that the workman have not terminated but during the cross-examination this witness has clearly admitted that no domestic inquiry has been conducted against the workman but they have issued four letters to the workman with regard to leaving and non-joining of duties with the management and the workman did not turn up to join duty and no reply was filed and he cannot tell whether the workman had received all the letters or not 15. As regards letters sent by the management then questions were specifically asked by the management to the workman while she stepped into the witness box and she clearly denied receipt of notices sent by the management and stated that she has not received any letter. Nobody had received the letters on her behalf as she used to be at home from morning to night. She also stated that she cannot say whether the postal receipts Exhibit 'MX1' & 'MX2' are receipt through which the respective letters were sent by the management and Exhibit 'MX3' is the letter returned unclaimed.

16. Meaning thereby from the perusal of the evidence of both the parties, no doubt as per the record the management had sent four letters to the workman but the workman denied receipt of letters. Further it is also admitted by the management that no domestic inquiry has been conducted by them. In case the workman had not turned up despite notice the management has to follow the proper procedure to terminate the workman from the services but nothing has been done on the part of the management. In this regard, reliance is made in citation **Bhimrao Rambhau Abhang Versus Kohinoor Engineering Company (supra)** wherein it is held that even in case of abandonment of service by the workman, it is necessary to consider issue of compliance of principles of natural justice. Admittedly, the workman had worked with the management from April 2011 to December 2014 and further as per evidence if the management partnership firm has been dissolved *vide* resolution deed dated 02.01.2017 but the partnership firm remained in existence after termination of the services of the workman approximately for four years from 2014 when the workman alleged herself to be terminated by the management. Hence, the workman cannot be reinstated with partnership firm has already been dissolved at present but the workman is held entitled for compensation in lump sum.

17. So far as the argument of learned representative for the management that Smt. Neena Mahajan, who is now sole proprietor of the management, has not been impleaded is concerned, the same hardly make any difference as in the demand notice and statement of claim, the workman had impleaded the firm through its Proprietor / Occupier and Manager.

18. In the light of discussion made above, it is held that the services of the workman have been terminated illegally by the management in violation of provisions of the ID Act and principles of natural justice. The workman is held entitled for lump sum compensation of `20,000/-. Accordingly, this issue is partly decided in favour of the workman and against the management.

Relief :

19. In the light of findings on the issues above, this industrial is partly allowed. The workman is entitled for lump sum compensation of ₹20,000/-. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

The 12th January, 2022.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 21st March, 2022

No. 13/1/9840-HII(2)-2022/4102.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 65/2015 dated 12.01.2022 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAHIMA BEGUM W/O SHRI RAFIQ AHMED, HOUSE NO. 239/A, BLOCK 1, LABOUR COLONY NO.4, INDUSTRIAL AREA - I, CHANDIGARH. (Workman)

AND

ALLIED INDUSTRIES UNIT - II, PLOT NO. 136/140/90, INDUSTRIAL AREA - I, CHANDIGARH THROUGH ITS PROPRIETOR/OCCUPIER & MANAGER (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that she was appointed by the management with effect from 01.06.2010 as Helper and worked continuously up to 31.12.2014. The management was entirely satisfied with her work and conduct. She was drawing wages of ₹4,900/- per month. She was terminated on 01.01.2015. According to notification of minimum wages, the workman was entitled for ₹7,838/-. The management had not complied with the provisions of the Factory Act, The Minimum Wages Act, The Payment of Wages Act and The Bonus Act. The workman made several complaints to the management. The management had issued her ESI Card after more than one year and not from actual joining. The management had not deposited deducted ESI Contribution regularly in the ESI Office as per rule. The management had not provided allowed leaves with wages to the workman according to "The Punjab Industrial Establishment National and Festival Holidays and Casual and Sick leaves Act 1965". The workmen are entitled for fourteen days sick leaves with wages, seven days casual leaves 15 days earned leave with wages annually and leaves Cards. The management had not paid single wages of worked overtime to the workman and co-workmen, which is clear cut violation of The

Minimum Wages Act on the part of management. The management always needs approximately about 22 workmen with power use, but deliberately kept conceal the original strength of workmen and more than half workmen kept away from the original record with aim to deprive them from their legal rights under the labor law and other liability. The management knowingly had not issued appointment letter and designation letter to the workman and co-workmen. Attendance marked in Exercise Note Book in the workshop like as rate of wages, designation, machine wise allotted job and production, working hour, over time hour, working Days, leaves(without wages) and calculation wages etc of factual position was written in this note book. Every month new Exercise Note Book started and old copy kept away from the workmen and original Attendance and Wages register maintained and kept at unfounded place away from the factory. The management never allowed to mark her attendance by signature in original attendance nor issued Attendance Card. The management had paid wages after obtaining signature in blank voucher and blank paper without date. The management had not issued wages slip or receipt of deducted of ESI contribution. The management had not issued any memo, charge sheet, nor conducted any enquiry in any matter before termination till date, because the workman was not at fault. The workman requested to concerned officer number of times to take her back on duty verbally or in writing but management did not hear her requests. This is gross violation of principles of natural justice. She is totally unemployed after termination until. The workman is facing all difficulties of unemployed person including starvation. Despite submitting demand notice and reporting for duty the management on every occasion refused to allow duty and told that they will teach her lesson and neither she can do duty nor Court can grant her any benefits. During conciliation proceedings never filed reply of demand notice nor gave any statement due to negative approach of management settlement could not arrived rather the management had never appeared in conciliation proceedings according to law and procedure despite several dates by this way the management pushed in the workman unwanted litigations showing the power to the workman. According to pre-condition of 25-F of ID Act and other provisions Labour Law at the time of refusal of work by verbal order under noted amount is payable with condition of 25-G & 25-H of the ID Act.

Sr. No.	HEADS	AMOUNT (IN RS.)
i)	Wages w.e.f. 01.12.2014 to 31.12.2014	7,838/-
ii)	Leaves with Wages which was not given (30 days)	7,838/-
iii)	Minimum Bonus@ 8.33% w.e.f. 01.04.2013 to 31.12.2014	13,500/-
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v)	Compensation according to Section 25-F of ID Act	19,595/-
vi)	Notice Pay According to Section 25 F of ID Act	7,838/-
vii)	Over Time 218 hours 01.07.2014 to 31.12.2014 under Section 59 of the Factory Act, 1948	14,627/-
TOTAL:-		<u>93,846/-</u>

The management had not paid or offered notice pay in lieu of notice or compensation to the workman. The job of workman exists, as it is, till date and the junior workmen to the workman are still retained in service by the management. So, there is serious violation of Section 25-F, 25-G & 25-H of the ID Act. The termination order badly disturbed to the workman's family. The management knowingly not complying with the provision of Article 14, 16 and 21 of the Constitution of India during service of workman and badly infringed the above article and provision there under at the time of termination of workman. The management misused right and power of management to conceal the facts from the Government Departments for their wrong

and illegal, which goes against the poor workman. Verbal termination order is illegal unjustified, malafide and violation of all the other provisions of ID Act so the workman is fully entitled for reinstatement with full back wages and continuity of services. Ultimately, it is prayed that the termination order be declared illegal and the workman be reinstated into service with continuity of services, with full back wages and all others applicable consequential benefits.

3. The management contested the case of the workman and filed written statement that the workman was working as Helper and appointed by the management in the month of June 2011 and had been absent from duty without any intimation or leave since 29.12.2014 and did not even respond to the notices dated 12.01.2015, 24.01.2015, 05.02.2015 and 19.02.2015 served upon her by the management to report to duty and explain the reasons of her unauthorized absence within the prescribed time period amounting to misconduct, but nothing was heard from her, instead she had approached the learned Assistant Labour Commissioner, Chandigarh and then this Court for reasons best known to her. She was drawing the wages of ₹7,950/- per month, which were more than the minimum wages. The Management has always complied with the statutory provisions and due to which there has not been any such complaint was ever made by the workman till date. The strength of 22 workman includes those other employees not covered under ESI scheme and was required when the management was a partnership firm and about 8 workmen employed by the management were covered under ESI scheme and since 02.01.2017 the partnership firm has been dissolved and the successor management M/s Allied Industries Unit - II is a sole proprietorship where only about 5 workmen are covered under ESI scheme. The workwoman has herself to blame for the situation she has been into as alleged by her. Rather the management had suffered due to her long and unexplained absence from her duties amounting to misconduct for which she is liable to compensate the management and in the situation no Management is expected to or can be directed to take the workwoman back into the job as such workman or woman are always a liability, who can cause huge losses to the management by way of a ripple effect. The management gave example opportunities to the workwoman to report to duty and give an explanation for her unauthorized absence which she did not choose to do, despite successful service of notices by the management on her on 4 occasions which concluded only one thing that the workwoman was not interested in the work of the management and had herself left the work for which the management cannot be held liable. The management never retrenched the workman from her service either verbally or in writing. She had willfully abstained and abandoned her work since 29.12.2014 for which, the management sent her a notice dated 12.01.2015 through ordinary post asking her to report back to duty within 7 days and to explain her reasons for absence from her duty, to which she did not reply. Another notice dated 24.01.2015 was sent to her through ordinary post reiterating the contents of the first notice and stating that if still she does not report to duty and files no reply strict action will be taken against her, in reply of which she neither joined her duty nor filed any explanation for her absence. Further, two more opportunities were given to the workman by the management when notices dated 05.02.2015 and 19.02.2015, both through registered, but she neither reported for duty nor filed any explanation for her unauthorized absence despite successful service of notices on 4 occasions. The workman had cooked up a story about requesting verbally or in writing to concerned officer number of times. The violation of Constitution provisions cannot be invoked before this Hon'ble High Court. The management had always complied with the statutory provisions. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of her case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. The workman also examined Shri Vivek Kumar Goyal - Branch Manager, ESIC Branch, Sector 29, Chandigarh as AW2. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Ashwani Mahajan - Authorised signatory as MW1 and closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No. 1:—

7. Onus to prove this issue was on the workman and to discharge the same, learned representative for the workman has examined the workman as AW1, who deposed that she was appointed by the management with effect from 01.06.2010 as Helper and work continuously upto 31.12.2014. The management was entirely satisfied with her work & conduct. She was terminated on 01.01.2015. According to notification of minimum wages, notification she was entitled for ₹ 7,838/-. Copy of minimum wages rates is Exhibit 'W1'. The management had not complied with the provisions of The Factory Act, The Minimum Act Wages Act, The Payment of Wages Act and The Bonus Act. The management had issued ESI card to her after more than one years and not from actual joining. Copy of ESI card is Exhibit 'W2'. The management is not providing allowed leave with wages to the workmen according to The Punjab Industrial Establishment National and Festival Holidays and Casual and Sick Leaves Act, 1965. The management always needs approximately about 22 workmen but deliberately conceal the original strength of the workmen. She also deposed that the management knowingly not issued appointment letter, designation letter to her and co-workmen. Attendance was being marked in exercise note book and every month new exercise note book was used. The management paid wages after obtaining signature in blank voucher and blank paper without date. She further deposed that the management had not issued any memo, charge sheet or conducted any inquiry before termination. She requested the concerned officer number of times to take her back on duty verbally or in writing but the management did not hear her requests. During conciliation proceedings never filed reply to the demand notice and never appear in conciliation proceedings. Copy of memo No.5343 dated 21.09.2015 is Exhibit 'W3'. She also deposed that the management had not paid or offered notice pay in lieu of notice or compensation to her. Her job still exists and junior to her were retained in service. There is serious violation of Section 25-F, 25-G & 25-H of the ID Act.

8. Learned representative for the workman also examined Shri Vivek Kumar Goyal - Branch Manager, ESIC Branch, Sector 29, Chandigarh as AW2, who proved the ESI record pertaining to the workman from 01.10.2010 to 30.09.2015 Exhibit 'AW2/1' to 'AW2/2'.

9. Learned representative for the workman has argued that the workman was appointed by the management as Helper on 01.06.2010 and she worked continuously upto 31.12.2014 when her services were terminated verbally. The services of the workman were terminated without issuing any notice, inquiry and retrenchment compensation. Though this Court has directed the management to produce the summoned record but the management intentionally did not produce the record to deprive the legal rights of the workman so adverse inference may be drawn against the management for not producing the record intentionally. Learned representative for the workman has relied upon citations *Bharat Sanchar Nigam Limited Versus Bhurumal*, (2014)7 Supreme Court Cases 177; *Habib Ullah Dar Versus Chairman & Others*, 2006-II-LLJ 237 (J&K); *Bhimrao Rambhau Abhang Versus Kohinoor Engineering Company*, 2005-III-LLJ 606 (Bombay) and *Mam Chand Versus Presiding Officer, Labour Court, Ambala & Others*, CWP No.16462 of 2012 decided on 07.02.2018 by the Hon'ble Punjab & Haryana High Court. He prayed for deciding this issue in favour of the workman and against the management.

10. On the other hand, learned representative for the management examined Shri Ashwani Mahajan as MW1, who deposed that he is authorised signatory of M/s Allied Industries Unit - II, an unregistered partnership firm which had since dissolved on 02.01.2017 whereby all the assets and liabilities were taken over by Smt. Neena Mahajan W/o Shri Ashwani Mahajan, R/o House No.832, Sector 9, Panchkula, who is now the Proprietor of M/s Allied Industries, being sole proprietorship. The workman has no cause of action against him or its successor to file present claim statement as she had left the job of her own and has been guilty of misconduct. The workman appointed by him in the month of June 2011 and she had absent from duty without any intimation or leave after 29.12.2014 and did not even respond to the various notices dated 12.01.2015, 24.01.2015, 05.02.2015 and 19.02.2015 served upon her. He further deposed that he had always complied with the statutory provisions. The strength of 22 workmen includes those other employees not covered under ESI Scheme. The management had suffered due to her long and unexplained absence from her duties amounting to misconduct for which she is liable to compensate the management. No settlement could be arrived during conciliation proceedings due to greed of the workman as the whole claim has been made with the object of extorting more money. The violation of constitutional provisions cannot be invoked before this Court.

11. Learned representative for the management has argued that the partnership of the management firm has been dissolved and Smt. Neena Mahajan had taken over M/s Allied Industries and she is the sole proprietor of the firm. He argued that the necessary party has not impleaded in the present case. He further argued that the present case is not a case of termination rather it is the case of willful abandonment of duties. The workman had absented without any intimation and did not respond to the communications and never reported for duty. He prayed for dismissal of the present claim of the workman.

12. I have very thoughtfully considered the rival contentions of both the sides. The workman is aggrieved that her services were terminated illegally by the management whereas it is the stand of the management that the services of the workman were never terminated rather she had absented from her duties without any intimation. As per the averments of the workman she was appointed by the management on 01.06.2010 as Helper and worked continuously upto 31.12.2014 and she was drawing wages of `4,900/-and as per minimum wages rates notification she was entitled to `7,838/-. The workman had proved on record Memo No.5346 dated 21.09.2015 Exhibit 'AW1/1' whereby conciliation proceedings stands closed, postal receipt dated 27.01.2015 Exhibit 'AW1/2', details of wages, working days of the workman as per ESI record Exhibit 'AW2/1' and returns of contributions of ESI Exhibit 'AW2/2' and copy of minimum wage rates for the period 01.10.2014 to 31.03.2015 Mark 'A'.

13. Perusal of the documentary evidence reveals that the workman had worked with the management from April 2011 to December 2014 with the management. Moreover, the management is not denying this fact that the workman had not worked with the management. Only argument addressed by the management is that the workman herself abandoned the job and she had not been terminated. The management had issued notices but the workman had not turned up. The partnership firm of the management has been dissolved and run by another partner solely. The workman has not impleaded necessary party.

14. Plea of the management is that the workman had left the job herself. They have already sent the notice 12.01.2015, 24.01.2015, 15.02.2015 and 19.02.2015 but she had not come present so the present case is not case of termination rather it is the case of abandonment of services. The management had examined Shri Ashwani Mahajan as MW1, who also reiterated the version and had stated that the workman have not terminated but during the cross-examination this witness has clearly admitted that no domestic inquiry has been conducted against the workman but they have issued four letters to the workman with regard to leaving and non-joining of duties with the management and the workman did not turn up to join duty and no reply was filed and he cannot tell whether the workman had received all the letters or not.

15. As regards letters sent by the management then questions were specifically asked by the management to the workman while she stepped into the witness box and she clearly denied receipt of notices sent by the management and stated that she has not received any letter. Nobody had received the letters on her behalf as she used to be at home from morning to night. She also stated that she cannot say whether the postal receipts Exhibit 'MX1' & 'MX2' are receipt through which the respective letters were sent by the management and Exhibit 'MX3' is the letter returned unclaimed.

16. Meaning thereby from the perusal of the evidence of both the parties, no doubt as per the record the management had sent four letters to the workman but the workman denied receipt of letters. Further it is also admitted by the management that no domestic inquiry has been conducted by them. In case the workman had not turned up despite notice the management has to follow the proper procedure to terminate the workman from the services but nothing has been done on the part of the management. In this regard, reliance is made in citation *Bhimrao Rambhau Abhang Versus Kohinoor Engineering Company (supra)* wherein it is held that even in case of abandonment of service by the workman, it is necessary to consider issue of compliance of principles of natural justice. Admittedly, the workman had worked with the management from April 2011 to December 2014 and further as per evidence if the management partnership firm has been dissolved *vide* resolution deed dated 02.01.2017 but the partnership firm remained in existence after termination of the services of the workman approximately for four years from 2014 when the workman alleged herself to be terminated by the management. Hence, the workman cannot be reinstated with partnership firm has already been dissolved at present but the workman is held entitled for compensation in lump sum.

17. So far as the argument of learned representative for the management that Smt. Neena Mahajan, who is now sole proprietor of the management, has not been impleaded is concerned, the same hardly make any difference as in the demand notice and statement of claim, the workman had impleaded the firm through its Proprietor / Occupier and Manager.

18. In the light of discussion made above, it is held that the services of the workman have been terminated illegally by the management in violation of provisions of the ID Act and principles of natural justice. The workman is held entitled for lump sum compensation of `20,000/-. Accordingly, this issue is partly decided in favour of the workman and against the management.

Relief :—

19. In the light of findings on the issues above, this industrial is partly allowed. The workman is entitled for lump sum compensation of `20,000/-. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

The 12th January, 2022.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th March, 2022

No. 13/1/9843-HII(2)-2022/4522.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award dated 10.02.2022 bearing reference No. 28/2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

HARJINDER SINGH S/O SHRI HARCHARAN SINGH, VILLAGE SURUAL KALAN,
POST OFFICE UGANI TEHSIL RAJPURA, DISTRICT PATIALA (Workman)

AND

DIRECTOR TRANSPORT, CHANDIGARH TRANSPORT UNDERTAKING, PLOT NO. 701,
INDUSTRIAL AREA, PHASE - I, CHANDIGARH (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor on the requisition in the year 1993 against the regular vacancies of Conductors and he was interviewed along with other candidates in May 1993 by the duly constituted selection committee by the management and the workman was issued selection letter in June 1993 stating that he has been selected for the post of Conductor in the pay scale of ₹ 950-1800 (with initial start of ₹ 1000/-) Plus usual allowances admissible from time to time and further his selection is subject to decision/outcome of O.A. NO. 4492/1993 filed by Mohinder Pal Soni & others which was pending before CAT Chandigarh Bench against cancellation of their regular selection (which was dismissed subsequently) and further workman was directed to report the office of management for completion of further formalities such as medical examination, Security Deposit, crash training on or before 28.06.1993. After medical examination, security deposit, declaration workman was deputed for one month Training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including the workman for the appointment to the post of Conductors against suspension / leave vacancy on purely temporary basis in pay scale ₹ 950-1800 (with initial start of ₹1,000/-) plus usual allowances from time to time and it was first time mentioned in the appointment letter that appointment is against suspension/leave vacancy without mentioning any specific period and the workman joined as per appointment letter and continuously working with the management but his services were disengaged on 12.04.1994 on the ground that on consequent upon re-instatement of the under suspension Conductors, the services of the following temporary Conductors, who were appointed against suspension vacancies are hereby discontinued with immediate effect being no longer required. The workman along with other filed O.A. No. 1000/ PB/1994 before CAT Chandigarh challenging the termination on the ground that their appointment was regular after following the procedure under the rules and was against regular after following the procedure under the rules and was against regular vacancies available with management but O.A. No.1000/1994 was dismissed by the CAT Chandigarh on the ground that as per appointment letter dated 15.10.1993 their appointment was temporary was also upheld by the Hon'ble High Court and Hon'ble Supreme Court of India. The workman and his colleagues has come to know in the month August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and period was extended from time to time and also made appointment to the posts of Conductors in subsequent years without affording any opportunity to the workman

who was the retrenched employee of the management and therefore the workman along with other six persons made application dated 23.08.2018 under RTI Act for seeking information under RTI Act regarding appointments made for the posts of the Conductors from 01.05.1994 to 20.08.2018 and the workman received reply dated 11. 12.2018 from the management under RTI which shows 40 Conductors were given regular appointment in 2000, 240 Conductors were given regular appointment in 2016, but without giving preference and opportunity to the workman at the time of making aforesaid appointments as provided in Section 25-H of the ID Act. The management intentionally did not give reply to the appointment made in December 1998 of 33 conductors on contractual basis, some of them were made regular and appointed of 19 posts of Conductors which was made on regular basis made in year 2001 vide Advertisement No.2/ECC/ECD/CTU/2001 and last date to receive the application was 27.08.2001 at 3 P.M.

The workman who had also worked as Conductor from 15.10.1993 to 22.04.1994 with management and was retrenched due to non availability of work and vacancies of Conductors but management while making the appointments for the posts of Conductors in December 1998 on 89 days on contractual basis and making regular appointment to the posts of Conductors in subsequent years in 2000, 2001, 2014 and 2016 without giving opportunity to the workman has violated Section 25-H of the ID Act. The management had also violated Rule 77 of Industrial Disputes (Central) Rules, 1957 regarding maintenance of seniority list of retrenched workmen in the particular category according to their service and further management has violated Rule 78 of Industrial Disputes (Central) Rules, 1957 regarding Re-employment of retrenched workmen wherein procedure has been prescribed for re-employment of the retrenched workmen which was mandatory for the management to follow before filling up the future vacancies. The workman, who was retrenched employee from the management and was retrenched due to non availability of work and vacancies of the Conductors. The appointment were made to the post of Conductors on contractual basis for the period of 89 days basis initially in December 1998 extended time to time and when regular selection and appointments were made subsequently to the posts of Conductors in the year 2000, 2001, 2014 and 2016 without affording opportunity to the workman, the management has denied opportunity to him and has violated Section 25-H of ID Act and action of the management amounts unfair labor practice and thus management also violated Section 25-T of the ID Act and thus the workman is entitled firstly to reinstatement as conductor from December 1998 along with consequential benefits from the date 33 conductors were appointed on contractual basis initially period of 89 days basis which was extended from time to time and made regular subsequently by the reinstatement as conductor from the date of regular appointments were made to the post of conductors in the year 2000, 2001, 2014 and 2016. The name of the workman was registered with Regional Employment Exchange, Union Territory Chandigarh and when the management sent requisition for filling up the posts of Conductors on regular basis in the pay scale and the name of workman was sponsored by the Employment Exchange to the management for the recruitment to the post of Conductors and the management given information regarding regular appointment to the Regional Employment Exchange, the name of the workman was deleted from the register of the Employment Exchange. Had the management informed to the employment exchange that appointment which was being made to the posts of Conductors was not regular then his name would not have been deleted from the register of the employment exchange and his name would have been sponsored to the subsequent regular appointment made in the year 2000, 2001, 2014 and 2016. His name would have been sponsored to any other Government job after his retrenchment. The workman is unemployed from the date of his retrenchment and is not gainfully employed anywhere from the date of his retrenchment. Ultimately, it is prayed that the workman be reinstated into service along with consequential benefits firstly from when 33 conductors were appointed on contractual basis initially for a period of 89 days and were allowed to continue from time to time and later on made regular by management without affording opportunity to the workman and secondly alternative relief of reinstatement along with consequential benefits be given to the workman from the date of subsequent regular appointments were made in the year 2000, 2001, 2014 and 2016 on regular basis to the post of Conductors without giving opportunity to the workman.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the present claim of the workman is badly time barred as the same relates to the events happened about 28 years back. The workman was sponsored by the Employment Exchange, Union Territory Chandigarh for recruitment to the post of Conductor as demanded by the management in the year 1993 so the employment exchange is necessary party in the instant demand notice. On merits, it is pleaded that since the appointments of 33 Conductor and 35 Drivers for 89 days on contractual basis in December 1998, if so made, was very old so despite of best possible efforts made by the management the record is not traceable. Till the year 2000 the appointments made by the management was made through the employment exchange and management had to select the candidate by following the due processes from the list provided by the employment exchange so the employment exchange is the necessary party to answer why the name of the workman was not forwarded to the management for consideration of employment in the year 1998. The appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 was made through the public advertisement in the leading newspapers and on the official website of Chandigarh Administration. The averments made regarding management intentionally did not given the reply to the RTI regarding appointment in the year 1998 and 2001 is beyond the jurisdiction of this Hon'ble court as if the workman was aggrieved with the information provided under RTI Act, he must approach to the Appellate Authority appointed under RTI Act, 2005 or to the Hon'ble CIC, New Delhi. The workman had worked as Conductor from 15.10.1993 to 22.04.1994 with the management and his services were discontinued with immediate effect being no longer required. As appointments, if so made, in the year 1998 and 2000 were made from candidates sponsored by the Employment Exchange, U.T., Chandigarh, after taking interview by the management whereas the appointments made in the year 2004 and 2016 were advertised through public notice in the leading newspapers and on the official website of the Chandigarh Administration as well but the workmen were never applied for the same. The management never violated Section 25-H of the ID Act as the same will be applicable to all the retrenched workmen who have been in continuous service for not less that one year. Also, the preference shall be confined to such workmen as would be able to establish that they had worked for a period of one year with or without a break, prior to their termination. In the instant case, the workman has not completed his 240 days of service with or without break with the respondent management as the services of the workman were discontinued by the respondent management after 190 days only. The workman registered his name with the Employment Exchange, Union Territory, Chandigarh as they were sponsored by employment exchange in the year 1993 against the vacancies available with the management. The workman was not covered under Section 25-F & 25-H of the ID Act. The information given to employment exchange that the appointment which is being made to the post of conductor was not regular is not traceable despite of best possible efforts made by the management as the same relates to the events happened about 28 years back. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed :—

1. Whether the workman is entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management ? OPW
2. Whether the claim of the workman is time barred ? OPM
3. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
4. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Daljit Singh - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :-

Issue No.1 to 3 :

7. Onus to prove issue No.1 was on the workman whereas onus to prove issue No.2 & 3 was on the management but all these issues are taken up together for the sake of convenience to avoid repetition. In support of his case, the workman examined himself as AW1 and deposed that on the requisition sent by the management for filling the regular posts of Conductors in the year 1993, his name was sent by the Employment Exchange, Union Territory Chandigarh and he was interviewed along with others. Thereafter in June 1993 selection was issued to him stating that he has been selected for the post of the Conductor in the pay of ₹ 950-1800, subject to decision of OA No.492/1993 pending before the Hon'ble Central Administrative Tribunal, Chandigarh Bench and directing him to complete formalities as medical examination, security deposit, crash training on or before 28.06.1993. He also deposed that after completion of all the formalities he was deputed for one month training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including himself stating that his appointment is against suspension / leave vacancy on purely temporary basis in the pay scale ₹950-1800, which was different condition than the condition imposed in the selection letter. His services were terminated / retrenched on 22.04.1994 on the ground no longer required on consequent upon reinstatement of the under suspension Conductors. He along with others filed OA No.1000-PB/1994 before the CAT, Chandigarh Bench, which was dismissed. He further deposed that he and his other colleagues came to know in the month of August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and they were allowed to continue from time to time and thereafter made regular for the post of Conductors without giving opportunity to him. In reply dated 11.12.2018 to the application dated 23.08.2018 under RTI Act, the management had admitted 40 Conductors in the year 2000, 240 Conductors in the year 2014 and 108 Conductors in the year 2016 were given regular appointment and willfully & intentionally not given reply to the appointment made in December 1998 as it is evident from judgment dated 30.01.2002 passed by the CAT, Chandigarh that 33 Conductors were appointed in December 1998. Vide letter dated 18.05.1998 permission regarding engaging Conductors from Chandigarh Administration was sought. The management while making recruitment / appointment for the post of Conductors has violated Section 25-H of the ID Act and also violated Rule 77 & 78 of the Industrial Disputes (Central) Rules, 1957. He further deposed that on the representation made by him and others, Chandigarh Administration has ordered inquiry with regard to posts of Conductors filled up by the management in the year 1993, in which it is stated by the Inquiry Officer that retrenched Conductors were duly selected by the committee and appointment after following the due procedure prescribed but they have been retrenched after short spell due to non-availability of vacancies so they be adjusted against future vacancies. He also deposed that since the management sent letter to the Employment Exchange for filling up regular posts so after sponsoring the name of himself to the management and consequent upon selection his name might have been deleted from the register of Employment Exchange due to this reason his name was not sponsored in the year 1998 and 2000. In May 1993 Employment Exchange sent a list of 400 candidates to the management out of which 90 Conductors including himself & other were selected but when in the year 1998 and 2000 when appointment for the post of Conductors were made on contract basis and regular basis no requisition was sent to the Employment Exchange and the Conductors were selected and appointed from old list of 400 Conductors received in the year 1993 without affording opportunity to him.

8. Learned representative for the workman has argued that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor in the year 1993 and he was selected for the post of Conductor and he was directed to report the office of the management after necessary formalities on or before 28.06.1993 and it was for the first time mentioned in the appointment letter that the appointment is against suspension / leave vacancy without mentioning any specific period. It is further argued that the workman and his colleagues came to know that in August 2018 that the management had appointed 33 Conductors and 35 Drivers for 89 days in December 1998 and period

was extended from time to time but the management had not given any opportunity to the workman who was retrenched employee of the management. He has placed on record information sought under the Right to Information Act with regard to it. Hence, the respondent has violated the provisions of Industrial Disputes (Central) Rules, 1957. Thereafter the post of Conductor in the year 2000, 2001, 2014 & 2016 was also filled by the management without affording opportunity to the workman in violation of Section 25-H of the ID Act which amounts to unfair labour practice. He placed reliance of citation ***Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh, 2019(1) SCC (L&S) 491*** and prayed for reinstatement of the workman along with consequential benefits from the date subsequent appointments made by the management in the year 2000, 2001, 2014 & 2016.

9. On the other hand, learned Law Officer for the management has examined Shri Daljit Singh - Senior Assistant as MW1, who deposed that since the instant demand notice relates to events happened around 28 year back so the complete record is not traceable. As per the minute record available in the office, the workman was sponsored by the Employment Exchange, Union Territory Chandigarh for the recruitment to the post of Conductor in the year 1993. The workman was appointed as Conductor vide order dated 15.10.1993 against suspension purely on temporary basis in the pay scale of ₹ 950-1800 with the initial start of ₹1,000/- plus usual allowance as admissible from time to time. The selection of the workman was made subject to the outcome of OA No.492/CH/1993 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, Chandigarh. Consequent upon the reinstatement of under suspension Conductors the services of the workman was ordered to be discontinued with immediate effect vide order dated 22.04.1994, which is within 190 days of selection order dated 18.06.1993. The workman had not completed 240 days of regular service with the management. He further deposed that the management appointed 33 Conductor and 34 Drivers for 89 days on contractual basis in December 1998 and period was extended for time to time. Till the year 2000 the appointments made by the management was through the Employment Exchange and the management has to select the candidates from the list provided by the Employment Exchange. The appointments made in the year 2014 and 2016 were advertised through public notice in the newspapers and on official website of the Chandigarh Administration as well.

10. Learned Law Officer for the management has argued that the workman is not entitled for the relief, as prayed for, as he was appointed as Conductor vide order dated 15.10.1993 against suspension / temporary basis subject to outcome of OA No.492/CH/1993 and consequent upon reinstatement of under suspension Conductors the services of the workman, being temporary basis, was ordered to be discontinued with effect vide order dated 22.04.1994. It is further argued that the workman had not completed 240 days of service so provisions of Section 24-F & 25-H of the ID Act are not applicable in the present case. He has placed reliance on citations ***Association of Chemical Workers Versus AT Alaspur, 1998(3) LLJ (Supp.) 800 (SC); State of Gujrat Versus Ramesh Mopabhai Rathod, 2004 LLR 255 (Gujarat) and State Bank of Bikaner & Jaipur Versus Union of India, 2007 LLR 222 (SN) (Jharkhan)***

11. It is further argued that the present claim is hopelessly time barred and no reasonable justification has been putforth for not filing the claim statement earlier. The present claim is bad for non-joinder of necessary parties the workman had not made Employment Exchange as necessary party. Moreover, the record of the present case is old one and appointments in the years 2014 & 2016 were made through advertisement in newspaper but the workman had never applied for the same. He prayed for dismissal of the claim of the workman.

12. After giving my careful consideration the rival contentions of both the parties. It is admitted case of the parties that the workman was appointed vide order dated 15.10.1993 on purely temporary basis and he remained in service till 22.04.1994. He was disengaged on 22.04.1994 on the ground that consequent upon the reinstatement of the under suspension Conductors, the services of the temporary Conductors are discontinued with immediate effect.

13. The workman had proved application dated 23.08.2018 under Right to Information Act Exhibit 'AW1/1'; information supplied under Right to Information Act vide letter dated 11.12.2018 Exhibit 'AW1/2'; letter dated 18.05.1998 regarding filling up the post of Drivers & Conductors on contractual basis Exhibit 'AW1/3'; representation to the Home Secretary, Chandigarh Administration against order of discontinuation of service Exhibit 'AW1/4'; newspaper cutting Exhibit 'AW1/5'; advertisement for recruitment of Bus Drivers and Conductors Exhibit 'AW1/6' and appointment letter dated 02.12.1998 of Shri Hans Raj as Bus Conductor on contract basis Exhibit 'AW1/7' whereas the management had proved appointment letter dated 18.06.1993 Exhibit 'MW1/1'; appointment order dated 15.10.1993 Exhibit 'MW1/2'; order dated 22.04.1994 regarding discontinuation of services of temporary Conductors Exhibit 'MW1/3' and advertisement made in the year 2016 for appointment of Bus Conductors on regular basis Exhibit 'MW1/4'

14. As per record it is not denied by the management that appointment of 33 Conductors and 35 Drivers were made on contractual basis in December 1999 and their period was extended from time to time and 19 posts of Conductors was also made on regular post in the year 2001 vide advertisement No.2/ ECC/ECD/CTU/2001. Thereafter the regular appointments were made in the year 2000, 2001, 2014 & 2016. The main bone of contention between the parties is regarding reemployment of the workman whereas the management is vehemently argued that the workman is not entitled for reemployment / reinstatement as the workman had approached the Court after a long delay so claim is badly time barred and secondly he has not made party to the Employment Exchange, Union Territory Chandigarh, who is to consider the name of the workman for the recruitment.

15. It is very much clear that the workman had approached the court with more than 28 years whereas the management had already published the advertisement in leading newspapers and on the official website of Chandigarh Administration for the appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 but the workman had never applied to the said posts. Hence from the year 1994 the workman kept mum and has never approached the management as well as Employment Exchange to enter their name for consideration of reemployment rather he had also not made party to the Employment Exchange, Union Territory Chandigarh, who can better tell why the name of the workman deleted or not carry-forwarded for further reemployment. Now after lapse of 28 years, as per reply of the management they are not in a position to bring the record being old one. Although there is no time limit to make reference under Section 10 of the ID Act but **there must be reasonable justification under for the delay.** In this regard reliance is made on citation titled as *Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)* wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent."

Further, similar views have been observed in citation *Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No. 4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court*. In the present case in hand, no reasonable justification has been put forth by the workman for delay of more than 28 years. The workman is simply relying on citation *Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh (supra)* but had not made any efforts for such long time.

16. In the light of discussion made above, it is held that the claim of the workman is hopelessly time barred and bad for non-joinder of necessary party i.e. Employment Exchange, Union Territory Chandigarh so the workman is not entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management. Accordingly, issue No.1 is decided against the workman and in favour of the management whereas issue No.2 & 3 is decided in favour of the management and against the workman.

Relief :

17. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 10th February, 2022.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION LABOUR DEPARTMENT

Notification

The 1st April, 2022

No. 13/1/9844-HII(2)-2022/4823.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award dated 10.02.2022 bearing reference No. 29/2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KULWINDER SINGH S/O SHRI ITBARI SINGH, VILLAGE SAFIPUR, POST OFFICE
DHARAMGARH, TEHSIL & DISTRICT MOHALI, PUNJAB (Workman)

AND

DIRECTOR TRANSPORT, CHANDIGARH TRANSPORT UNDERTAKING,
PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor on the requisition in the year 1993 against the regular vacancies of Conductors and he was interviewed along with other candidates in May 1993 by the duly constituted selection committee by the management and the workman was issued selection letter in June 1993 stating that he has been selected for the post of Conductor in the pay

scale of ₹ 950-1800 (with initial start of ₹ 1000/-) Plus usual allowances admissible from time to time and further his selection is subject to decision/outcome of O.A. NO. 4492/1993 filed by Mohinder Pal Soni & others which was pending before CAT Chandigarh Bench against cancellation of their regular selection (which was dismissed subsequently) and further workman was directed to report the office of management for completion of further formalities such as medical examination, Security Deposit, crash training on or before 28.06.1993. After medical examination, security deposit, declaration workman was deputed for one month Training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including the workman for the appointment to the post of Conductors against suspension / leave vacancy on purely temporary basis in pay scale ₹ 950-1800 (with initial start of ₹ 1,000/-) plus usual allowances from time to time and it was first time mentioned in the appointment letter that appointment is against suspension/leave vacancy without mentioning any specific period and the workman joined as per appointment letter and continuously working with the management but his services were disengaged on 22.04.1994 on the ground that on consequent upon re-instatement of the under suspension Conductors, the services of the following temporary Conductors, who were appointed against suspension vacancies are hereby discontinued with immediate effect being no longer required. The workman along with other filed O.A. No. 1000/ PB/1994 before CAT Chandigarh challenging the termination on the ground that their appointment was regular after following the procedure under the rules and was against regular after following the procedure under the rules and was against regular vacancies available with management but O.A. No.1000/1994 was dismissed by the CAT Chandigarh on the ground that as per appointment letter dated 15.10.1993 their appointment was temporary was also upheld by the Hon'ble High Court and Hon'ble Supreme Court of India. The workman and his colleagues has come to know in the month August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and period was extended from time to time and also made appointment to the posts of Conductors in subsequent years without affording any opportunity to the workman who was the retrenched employee of the management and therefore the workman along with other six persons made application dated 23.08.2018 under RTI Act for seeking information under RTI Act regarding appointments made for the posts of the Conductors from 01.05.1994 to 20.08.2018 and the workman received reply dated 11. 12.2018 from the management under RTI which shows 40 Conductors were given regular appointment in 2000, 240 Conductors were given regular appointment in 2016, but without giving preference and opportunity to the workman at the time of making aforesaid appointments as provided in Section 25-H of the ID Act. The management intentionally did not give reply to the appointment made in December 1998 of 33 conductors on contractual basis, some of them were made regular and appointed of 19 posts of Conductors which was made on regular basis made in year 2001 vide Advertisement No. 2/ECC/ECD/CTU/2001 and last date to receive the application was 27.08.2001 at 3 P.M.

The workman who had also worked as Conductor from 15.10.1993 to 22.04.1994 with management and was retrenched due to non availability of work and vacancies of Conductors but management while making the appointments for the posts of Conductors in December 1998 on 89 days on contractual basis and making regular appointment to the posts of Conductors in subsequent years in 2000, 2001, 2014 and 2016 without giving opportunity to the workman has violated Section 25-H of the ID Act. The management had also violated Rule 77 of Industrial Disputes (Central) Rules, 1957 regarding maintenance of seniority list of retrenched workmen in the particular category according to their service and further management has violated Rule 78 of Industrial Disputes (Central) Rules, 1957 regarding Re-employment of retrenched workmen wherein procedure has been prescribed for re-employment of the retrenched workmen which was mandatory for the management to follow before filling up the future vacancies. The workman, who was retrenched employee from the management and was retrenched due to non availability of work and vacancies of the Conductors. The appointment were made to the post of Conductors on contractual basis for the period of 89 days basis initially in December 1998 extended time to time and when regular selection and appointments were made subsequently to the posts of Conductors in the year 2000, 2001, 2014 and 2016 without affording opportunity to the workman, the management has denied opportunity to him and has violated Section 25-H of ID Act and action of the management amounts unfair labor practice and thus management also violated Section 25-T of the ID Act

and thus the workman is entitled firstly to reinstatement as conductor from December 1998 along with consequential benefits from the date 33 conductors were appointed on contractual basis initially period of 89 days basis which was extended from time to time and made regular subsequently by the reinstatement as conductor from the date of regular appointments were made to the post of conductors in the year 2000, 2001, 2014 and 2016. The name of the workman was registered with Regional Employment Exchange, Union Territory Chandigarh and when the management sent requisition for filling up the posts of Conductors on regular basis in the pay scale and the name of workman was sponsored by the Employment Exchange to the management for the recruitment to the post of Conductors and the management given information regarding regular appointment to the Regional Employment Exchange, the name of the workman was deleted from the register of the Employment Exchange. Had the management informed to the employment exchange that appointment which was being made to the posts of Conductors was not regular then his name would not have been deleted from the register of the employment exchange and his name would have been sponsored to the subsequent regular appointment made in the year 2000, 2001, 2014 and 2016. His name would have been sponsored to any other Government job after his retrenchment. The workman is unemployed from the date of his retrenchment and is not gainfully employed anywhere from the date of his retrenchment. Ultimately, it is prayed that the workman be reinstated into service along with consequential benefits firstly from when 33 conductors were appointed on contractual basis initially for a period of 89 days and were allowed to continue from time to time and later on made regular by management without affording opportunity to the workman and secondly alternative relief of reinstatement along with consequential benefits be given to the workman from the date of subsequent regular appointments were made in the year 2000, 2001, 2014 and 2016 on regular basis to the post of Conductors without giving opportunity to the workman.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the present claim of the workman is badly time barred as the same relates to the events happened about 28 years back. The workman was sponsored by the Employment Exchange, Union Territory Chandigarh for recruitment to the post of Conductor as demanded by the management in the year 1993 so the employment exchange is necessary party in the instant demand notice. On merits, it is pleaded that since the appointments of 33 Conductor and 35 Drivers for 89 days on contractual basis in December 1998, if so made, was very old so despite of best possible efforts made by the management the record is not traceable. Till the year 2000 the appointments made by the management was made through the employment exchange and management had to select the candidate by following the due processes from the list provided by the employment exchange so the employment exchange is the necessary party to answer why the name of the workman was not forwarded to the management for consideration of employment in the year 1998. The appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 was made through the public advertisement in the leading newspapers and on the official website of Chandigarh Administration. The averments made regarding management intentionally did not given the reply to the RTI regarding appointment in the year 1998 and 2001 is beyond the jurisdiction of this Hon'ble court as if the workman was aggrieved with the information provided under RTI Act, he must approach to the Appellate Authority appointed under RTI Act, 2005 or to the Hon'ble CIC, New Delhi. The workman had worked as Conductor from 15.10.1993 to 22.04.1994 with the management and his services were discontinued with immediate effect being no longer required. As appointments, if so made, in the year 1998 and 2000 were made from candidates sponsored by the Employment Exchange, U.T., Chandigarh, after taking interview by the management whereas the appointments made in the year 2004 and 2016 were advertised through public notice in the leading newspapers and on the official website of the Chandigarh Administration as well but the workmen were never applied for the same. The management never violated Section 25-H of the ID Act as the same will be applicable to all the retrenched workmen who have been in continuous service for not less than one year. Also, the preference shall be confined to such workmen as would be able to establish that they had worked for a period of one year with or without a break, prior to their termination. In the instant case, the workman has not completed his 240 days of service with or without break with the respondent management as the services of the workman were discontinued by the respondent management after 190 days only. The workman registered his name with the Employment Exchange,

Union Territory, Chandigarh as they were sponsored by employment exchange in the year 1993 against the vacancies available with the management. The workman was not covered under Section 25-F & 25-H of the ID Act. The information given to employment exchange that the appointment which is being made to the post of conductor was not regular is not traceable despite of best possible efforts made by the management as the same relates to the events happened about 28 years back. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed :—

1. Whether the workman is entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management ? OPW
2. Whether the claim of the workman is time barred ? OPM
3. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
4. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Daljit Singh - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No.1 to 3 :

7. Onus to prove issue No.1 was on the workman whereas onus to prove issue No.2 & 3 was on the management but all these issues are taken up together for the sake of convenience to avoid repetition. In support of his case, the workman examined himself as AW1 and deposed that on the requisition sent by the management for filling the regular posts of Conductors in the year 1993, his name was sent by the Employment Exchange, Union Territory Chandigarh and he was interviewed along with others. Thereafter in June 1993 selection was issued to him stating that he has been selected for the post of the Conductor in the pay of ₹ 950-1800, subject to decision of OA No.492/1993 pending before the Hon'ble Central Administrative Tribunal, Chandigarh Bench and directing him to complete formalities as medical examination, security deposit, crash training on or before 28.06.1993. He also deposed that after completion of all the formalities he was deputed for one month training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including himself stating that his appointment is against suspension / leave vacancy on purely temporary basis in the pay scale ₹ 950-1800, which was different condition than the condition imposed in the selection letter. His services were terminated / retrenched on 22.04.1994 on the ground no longer required on consequent upon reinstatement of the under suspension Conductors. He along with others filed OA No.1000-PB/1994 before the CAT, Chandigarh Bench, which was dismissed. He further deposed that he and his other colleagues came to know in the month of August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and they were allowed to continue from time to time and thereafter made regular for the post of Conductors without giving opportunity to him. In reply dated 11.12.2018 to the application dated 23.08.2018 under RTI Act, the management had admitted 40 Conductors in the year 2000, 240 Conductors in the year 2014 and 108 Conductors in the year 2016 were given regular appointment and willfully & intentionally not given reply to the appointment made in December 1998 as it is evident from judgment dated 30.01.2002 passed by the CAT, Chandigarh that 33 Conductors were appointed in December 1998. *Vide* letter dated 18.05.1998 permission regarding engaging Conductors from Chandigarh Administration was sought. The management while making recruitment / appointment for the post of Conductors has violated Section 25-H of the ID Act and also violated Rule 77 & 78 of the Industrial Disputes (Central) Rules, 1957. He further deposed that on the representation

made by him and others, Chandigarh Administration has ordered inquiry with regard to posts of Conductors filled up by the management in the year 1993, in which it is stated by the Inquiry Officer that retrenched Conductors were duly selected by the committee and appointment after following the due procedure prescribed but they have been retrenched after short spell due to non-availability of vacancies so they be adjusted against future vacancies. He also deposed that since the management sent letter to the Employment Exchange for filing up regular posts so after sponsoring the name of himself to the management and consequent upon selection his name might have been deleted from the register of Employment Exchange due to this reason his name was not sponsored in the year 1998 and 2000. In May 1993 Employment Exchange sent a list of 400 candidates to the management out of which 90 Conductors including himself & other were selected but when in the year 1998 and 2000 when appointment for the post of Conductors were made on contract basis and regular basis no requisition was sent to the Employment Exchange and the Conductors were selected and appointed from old list of 400 Conductors received in the year 1993 without affording opportunity to him.

8. Learned representative for the workman has argued that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor in the year 1993 and he was selected for the post of Conductor and he was directed to report the office of the management after necessary formalities on or before 28.06.1993 and it was for the first time mentioned in the appointment letter that the appointment is against suspension / leave vacancy without mentioning any specific period. It is further argued that the workman and his colleagues came to know that in August 2018 that the management had appointed 33 Conductors and 35 Drivers for 89 days in December 1998 and period was extended from time to time but the management had not given any opportunity to the workman who was retrenched employee of the management. He has placed on record information sought under the Right to Information Act with regard to it. Hence, the respondent has violated the provisions of Industrial Disputes (Central) Rules, 1957. Thereafter the post of Conductor in the year 2000, 2001, 2014 & 2016 was also filled by the management without affording opportunity to the workman in violation of Section 25-H of the ID Act which amounts to unfair labour practice. He placed reliance of citation **Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh, 2019(1) SCC (L&S) 491** and prayed for reinstatement of the workman along with consequential benefits from the date subsequent appointments made by the management in the year 2000, 2001, 2014 & 2106.

9. On the other hand, learned Law Officer for the management has examined Shri Daljit Singh - Senior Assistant as MW1, who deposed that since the instant demand notice relates to events happened around 28 year back so the complete record is not traceable. As per the minute record available in the office, the workman was sponsored by the Employment Exchange, Union Territory Chandigarh for the recruitment to the post of Conductor in the year 1993. The workman was appointed as Conductor vide order dated 15.10.1993 against suspension purely on temporary basis in the pay scale of ₹ 950-1800 with the initial start of ₹ 1,000/- plus usual allowance as admissible from time to time. The selection of the workman was made subject to the outcome of OA No.492/CH/1993 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, Chandigarh. Consequent upon the reinstatement of under suspension Conductors the services of the workman was ordered to be discontinued with immediate effect vide order dated 22.04.1994, which is within 190 days of selection order dated 18.06.1993. The workman had not completed 240 days of regular service with the management. He further deposed that the management appointed 33 Conductor and 34 Drivers for 89 days on contractual basis in December 1998 and period was extended for time to time. Till the year 2000 the appointments made by the management was through the Employment Exchange and the management has to select the candidates from the list provided by the Employment Exchange. The appointments made in the year 2014 and 2016 were advertised through public notice in the newspapers and on official website of the Chandigarh Administration as well.

10. Learned Law Officer for the management has argued that the workman is not entitled for the relief, as prayed for, as he was appointed as Conductor vide order dated 15.10.1993 against suspension / temporary basis subject to outcome of OA No.492/CH/1993 and consequent upon reinstatement of under

suspension Conductors the services of the workman, being temporary basis, was ordered to be discontinued with effect vide order dated 22.04.1994. It is further argued that the workman had not completed 240 days of service so provisions of Section 24-F & 25-H of the ID Act are not applicable in the present case. He has placed reliance on citations *Association of Chemical Workers Versus AT Alaspur, 1998(3) LLJ (Supp.) 800 (SC)*; *State of Gujrat Versus Ramesh Mopabhai Rathod, 2004 LLR 255 (Gujarat)* and *State Bank of Bikaner & Jaipur Versus Union of India, 2007 LLR 222 (SN) (Jharkhan)*

11. It is further argued that the present claim is hopelessly time barred and no reasonable justification has been putforth for not filing the claim statement earlier. The present claim is bad for non-joinder of necessary parties the workman had not made Employment Exchange as necessary party. Moreover, the record of the present case is old one and appointments in the years 2014 & 2016 were made through advertisement in newspaper but the workman had never applied for the same. He prayed for dismissal of the claim of the workman.

12. After giving my careful consideration the rival contentions of both the parties. It is admitted case of the parties that the workman was appointed vide order dated 15.10.1993 on purely temporary basis and he remained in service till 22.04.1994. He was disengaged on 22.04.1994 on the ground that consequent upon the reinstatement of the under suspension Conductors, the services of the temporary Conductors are discontinued with immediate effect.

13. The workman had proved application dated 23.08.2018 under Right to Information Act Exhibit 'AW1/1'; information supplied under Right to Information Act vide letter dated 11.12.2018 Exhibit 'AW1/2'; letter dated 18.05.1998 regarding filling up the post of Drivers & Conductors on contractual basis Exhibit 'AW1/3'; representation to the Home Secretary, Chandigarh Administration against order of discontinuation of service Exhibit 'AW1/4'; newspaper cutting Exhibit 'AW1/5'; advertisement for recruitment of Bus Drivers and Conductors Exhibit 'AW1/6' and appointment letter dated 02.12.1998 of Shri Hans Raj as Bus Conductor on contract basis Exhibit 'AW1/7' whereas the management had proved appointment letter dated 18.06.1993 Exhibit 'MW1/1'; appointment order dated 15.10.1993 Exhibit 'MW1/2'; order dated 22.04.1994 regarding discontinuation of services of temporary Conductors Exhibit 'MW1/3' and advertisement made in the year 2016 for appointment of Bus Conductors on regular basis Exhibit 'MW1/4'

14. As per record it is not denied by the management that appointment of 33 Conductors and 35 Drivers were made on contractual basis in December 1999 and their period was extended from time to time and 19 posts of Conductors was also made on regular post in the year 2001 vide advertisement No.2/ ECC/ECD/CTU/2001. Thereafter the regular appointments were made in the year 2000, 2001, 2014 & 2016. The main bone of contention between the parties is regarding reemployment of the workman whereas the management is vehemently argued that the workman is not entitled for reemployment / reinstatement as the workman had approached the Court after a long delay so claim is badly time barred and secondly he has not made party to the Employment Exchange, Union Territory Chandigarh, who is to consider the name of the workman for the recruitment.

15. It is very much clear that the workman had approached the court with more than 28 years whereas the management had already published the advertisement in leading newspapers and on the official website of Chandigarh Administration for the appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 but the workman had never applied to the said posts. Hence from the year 1994 the workman kept mum and has never approached the management as well as Employment Exchange to enter their name for consideration of reemployment rather he had also not made party to the Employment Exchange,

Union Territory, Chandigarh, who can better tell why the name of the workman deleted or not carry-forwarded for further reemployment. Now after lapse of 28 years, as per reply of the management they are not in a position to bring the record being old one. Although there is no time limit to make reference under Section 10 of the ID Act **but there must be reasonable justification under for the delay.** In this regard reliance is made on citation titled as *Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)* wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was *ex facie* bad and incompetent."

Further, similar views have been observed in citation *Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court.* In the present case in hand, no reasonable justification has been putforth by the workman for delay of more than 28 years. The workman is simply relying on citation *Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh (supra)* but had not made any efforts for such long time.

16. In the light of discussion made above, it is held that the claim of the workman is hopelessly time barred and bad for non-joinder of necessary party i.e. Employment Exchange, Union Territory Chandigarh so the workman is not entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management. Accordingly, issue No.1 is decided against the workman and in favour of the management whereas issue No.2 & 3 is decided in favour of the management and against the workman.

Relief :

17. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 10th February, 2022.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th March, 2022

No. 13/1/9845-HII(2)-2022/4524.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award dated 10.02.2022 bearing reference No. 30/2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

NAND LAL S/O SHRI RAJ KANWAL, VILLAGE & POST OFFICE MULLANPUR,
TEHSIL KHARAR, DISTRICT MOHALI, PUNJAB (Workman)

AND

DIRECTOR TRANSPORT, CHANDIGARH TRANSPORT UNDERTAKING, PLOT NO.701,
INDUSTRIAL AREA, PHASE - I, CHANDIGARH (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor on the requisition in the year 1993 against the regular vacancies of Conductors and he was interviewed along with other candidates in May 1993 by the duly constituted selection committee by the management and the workman was issued selection letter in June 1993 stating that he has been selected for the post of Conductor in the pay scale of ₹950-1800 (with initial start of ₹1000/-) Plus usual allowances admissible from time to time and further his selection is subject to decision/outcome of O.A. NO. 4492/1993 filed by Mohinder Pal Soni & others which was pending before CAT Chandigarh Bench against cancellation of their regular selection (which was dismissed subsequently) and further workman was directed to report the office of management for completion of further formalities such as medical examination, Security Deposit, crash training on or before 28.06.1993. After medical examination, security deposit, declaration workman was deputed for one month Training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including the workman for the appointment to the post of Conductors against suspension / leave vacancy on purely temporary basis in pay scale ₹ 950-1800 (with initial start of ₹1,000/-) plus usual allowances from time to time and it was first time mentioned in the appointment letter that appointment is against suspension/leave vacancy without mentioning any specific period and the workman joined as per appointment letter and continuously working with the management but his services were disengaged on 22.04.1994 on the ground that on consequent upon re-instatement of the under suspension Conductors, the services of the following temporary Conductors, who were appointed against suspension vacancies are hereby discontinued with immediate effect being no longer required. The workman along with other filed O.A. No. 1000/ PB/1994 before CAT Chandigarh challenging the termination on the ground that their appointment was regular after following the procedure under the rules and was against regular after following the procedure under the rules and was against regular vacancies available with management but O.A. No.1000/1994 was dismissed by the CAT Chandigarh on the ground that as per appointment letter dated 15.10.1993 their appointment was temporary was also upheld by the Hon'ble High Court and Hon'ble Supreme Court of India. The workman and his colleagues has come to know in the month August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and period was extended from time to time and also made appointment to the posts of Conductors in subsequent years without affording any opportunity to the workman who was the

retrenched employee of the management and therefore the workman along with other six persons made application dated 23.08.2018 under RTI Act for seeking information under RTI Act regarding appointments made for the posts of the Conductors from 01.05.1994 to 20.08.2018 and the workman received reply dated 11. 12.2018 from the management under RTI which shows 40 Conductors were given regular appointment in 2000, 240 Conductors were given regular appointment in 2016, but without giving preference and opportunity to the workman at the time of making aforesaid appointments as provided in Section 25-H of the ID Act. The management intentionally did not give reply to the appointment made in December 1998 of 33 conductors on contractual basis, some of them were made regular and appointed of 19 posts of Conductors which was made on regular basis made in year 2001 *vide* Advertisement No.2/ECC/ECD/CTU/2001 and last date to receive the application was 27.08.2001 at 3 P.M.

The workman who had also worked as Conductor from 15.10.1993 to 22.04.1994 with management and was retrenched due to non availability of work and vacancies of Conductors but management while making the appointments for the posts of Conductors in December 1998 on 89 days on contractual basis and making regular appointment to the posts of Conductors in subsequent years in 2000, 2001, 2014 and 2016 without giving opportunity to the workman has violated Section 25-H of the ID Act. The management had also violated Rule 77 of Industrial Disputes (Central) Rules, 1957 regarding maintenance of seniority list of retrenched workmen in the particular category according to their service and further management has violated Rule 78 of Industrial Disputes (Central) Rules, 1957 regarding Re-employment of retrenched workmen wherein procedure has been prescribed for re-employment of the retrenched workmen which was mandatory for the management to follow before filling up the future vacancies. The workman, who was retrenched employee from the management and was retrenched due to non availability of work and vacancies of the Conductors. The appointment were made to the post of Conductors on contractual basis for the period of 89 days basis initially in December 1998 extended time to time and when regular selection and appointments were made subsequently to the posts of Conductors in the year 2000, 2001, 2014 and 2016 without affording opportunity to the workman, the management has denied opportunity to him and has violated Section 25-H of ID Act and action of the management amounts unfair labor practice and thus management also violated Section 25-T of the ID Act and thus the workman is entitled firstly to reinstatement as conductor from December 1998 along with consequential benefits from the date 33 conductors were appointed on contractual basis initially period of 89 days basis which was extended from time to time and made regular subsequently by the reinstatement as conductor from the date of regular appointments were made to the post of conductors in the year 2000, 2001, 2014 and 2016. The name of the workman was registered with Regional Employment Exchange, Union Territory Chandigarh and when the management sent requisition for filling up the posts of Conductors on regular basis in the pay scale and the name of workman was sponsored by the Employment Exchange to the management for the recruitment to the post of Conductors and the management given information regarding regular appointment to the Regional Employment Exchange, the name of the workman was deleted from the register of the Employment Exchange. Had the management informed to the employment exchange that appointment which was being made to the posts of Conductors was not regular then his name would not have been deleted from the register of the employment exchange and his name would have been sponsored to the subsequent regular appointment made in the year 2000, 2001, 2014 and 2016. His name would have been sponsored to any other Government job after his retrenchment. The workman is unemployed from the date of his retrenchment and is not gainfully employed anywhere from the date of his retrenchment. Ultimately, it is prayed that the workman be reinstated into service along with consequential benefits firstly from when 33 conductors were appointed on contractual basis initially for a period of 89 days and were allowed to continue from time to time and later on made regular by management without affording opportunity to the workman and secondly alternative relief of reinstatement along with consequential benefits be given to the workman from the date of subsequent regular appointments were made in the year 2000, 2001, 2014 and 2016 on regular basis to the post of Conductors without giving opportunity to the workman.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the present claim of the workman is badly time barred as the same relates to the events happened about 28 years back. The workman was sponsored by the Employment Exchange, Union Territory Chandigarh for recruitment to the post of Conductor as demanded by the management in the year 1993 so the employment exchange is necessary party in the instant demand notice. On merits, it is pleaded that since the appointments of 33 Conductor and 35 Drivers for 89 days on contractual basis in December 1998, if so made, was very old so despite of best possible efforts made by the management the record is not traceable. Till the year 2000 the appointments made by the management was made through the employment exchange and management had to select the candidate by following the due processes from the list provided by the employment exchange so the employment exchange is the necessary party to answer why the name of the workman was not forwarded to the management for consideration of employment in the year 1998. The appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 was made through the public advertisement in the leading newspapers and on the official website of Chandigarh Administration. The averments made regarding management intentionally did not given the reply to the RTI regarding appointment in the year 1998 and 2001 is beyond the jurisdiction of this Hon'ble court as if the workman was aggrieved with the information provided under RTI Act, he must approach to the Appellate Authority appointed under RTI Act, 2005 or to the Hon'ble CIC, New Delhi. The workman had worked as Conductor from 15.10.1993 to 22.04.1994 with the management and his services were discontinued with immediate effect being no longer required. As appointments, if so made, in the year 1998 and 2000 were made from candidates sponsored by the Employment Exchange, U.T., Chandigarh, after taking interview by the management whereas the appointments made in the year 2004 and 2016 were advertised through public notice in the leading newspapers and on the official website of the Chandigarh Administration as well but the workmen were never applied for the same. The management never violated Section 25-H of the ID Act as the same will be applicable to all the retrenched workmen who have been in continuous service for not less that one year. Also, the preference shall be confined to such workmen as would be able to establish that they had worked for a period of one year with or without a break, prior to their termination. In the instant case, the workman has not completed his 240 days of service with or without break with the respondent management as the services of the workman were discontinued by the respondent management after 190 days only. The workman registered his name with the Employment Exchange, Union Territory, Chandigarh as they were sponsored by employment exchange in the year 1993 against the vacancies available with the management. The workman was not covered under Section 25-F & 25-H of the ID Act. The information given to employment exchange that the appointment which is being made to the post of conductor was not regular is not traceable despite of best possible efforts made by the management as the same relates to the events happened about 28 years back. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed :—

1. Whether the workman is entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management ? OPW
2. Whether the claim of the workman is time barred ? OPM
3. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
4. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Daljit Singh - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No.1 to 3 :—

7. Onus to prove issue No.1 was on the workman whereas onus to prove issue No.2 & 3 was on the management but all these issues are taken up together for the sake of convenience to avoid repetition. In support of his case, the workman examined himself as AW1 and deposed that on the requisition sent by the management for filling the regular posts of Conductors in the year 1993, his name was sent by the Employment Exchange, Union Territory Chandigarh and he was interviewed along with others. Thereafter in June 1993 selection was issued to him stating that he has been selected for the post of the Conductor in the pay of ₹ 950-1800, subject to decision of OA No.492/1993 pending before the Hon'ble Central Administrative Tribunal, Chandigarh Bench and directing him to complete formalities as medical examination, security deposit, crash training on or before 28.06.1993. He also deposed that after completion of all the formalities he was deputed for one month training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including himself stating that his appointment is against suspension / leave vacancy on purely temporary basis in the pay scale ₹ 950-1800, which was different condition than the condition imposed in the selection letter. His services were terminated / retrenched on 22.04.1994 on the ground no longer required on consequent upon reinstatement of the under suspension Conductors. He along with others filed OA No.1000-PB/1994 before the CAT, Chandigarh Bench, which was dismissed. He further deposed that he and his other colleagues came to know in the month of August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and they were allowed to continue from time to time and thereafter made regular for the post of Conductors without giving opportunity to him. In reply dated 11.12.2018 to the application dated 23.08.2018 under RTI Act, the management had admitted 40 Conductors in the year 2000, 240 Conductors in the year 2014 and 108 Conductors in the year 2016 were given regular appointment and willfully & intentionally not given reply to the appointment made in December 1998 as it is evident from judgment dated 30.01.2002 passed by the CAT, Chandigarh that 33 Conductors were appointed in December 1998. *Vide* letter dated 18.05.1998 permission regarding engaging Conductors from Chandigarh Administration was sought. The management while making recruitment / appointment for the post of Conductors has violated Section 25-H of the ID Act and also violated Rule 77 & 78 of the Industrial Disputes (Central) Rules, 1957. He further deposed that on the representation made by him and others, Chandigarh Administration has ordered inquiry with regard to posts of Conductors filled up by the management in the year 1993, in which it is stated by the Inquiry Officer that retrenched Conductors were duly selected by the committee and appointment after following the due procedure prescribed but they have been retrenched after short spell due to non-availability of vacancies so they be adjusted against future vacancies. He also deposed that since the management sent letter to the Employment Exchange for filling up regular posts so after sponsoring the name of himself to the management and consequent upon selection his name might have been deleted from the register of Employment Exchange due to this reason his name was not sponsored in the year 1998 and 2000. In May 1993 Employment Exchange sent a list of 400 candidates to the management out of which 90 Conductors including himself & other were selected but when in the year 1998 and 2000 when appointment for the post of Conductors were made on contract basis and regular basis no requisition was sent to the Employment Exchange and the Conductors were selected and appointed from old list of 400 Conductors received in the year 1993 without affording opportunity to him.

8. Learned representative for the workman has argued that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor in the year 1993 and he was selected for the post of Conductor and he was directed to report the office of the management after necessary formalities on or before 28.06.1993 and it was for the first time mentioned in the appointment letter that the appointment is against suspension / leave vacancy without mentioning any specific period. It is further argued that the workman and his colleagues came to know that in August 2018 that the management had appointed 33 Conductors and 35 Drivers for 89 days in December 1998 and period

was extended from time to time but the management had not given any opportunity to the workman who was retrenched employee of the management. He has placed on record information sought under the Right to Information Act with regard to it. Hence, the respondent has violated the provisions of Industrial Disputes (Central) Rules, 1957. Thereafter the post of Conductor in the year 2000, 2001, 2014 & 2016 was also filled by the management without affording opportunity to the workman in violation of Section 25-H of the ID Act which amounts to unfair labour practice. He placed reliance of citation ***Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh, 2019(1) SCC (L&S) 491*** and prayed for reinstatement of the workman along with consequential benefits from the date subsequent appointments made by the management in the year 2000, 2001, 2014 & 2016.

9. On the other hand, learned Law Officer for the management has examined Shri Daljit Singh - Senior Assistant as MW1, who deposed that since the instant demand notice relates to events happened around 28 year back so the complete record is not traceable. As per the minute record available in the office, the workman was sponsored by the Employment Exchange, Union Territory Chandigarh for the recruitment to the post of Conductor in the year 1993. The workman was appointed as Conductor *vide* order dated 15.10.1993 against suspension purely on temporary basis in the pay scale of ₹ 950-1800 with the initial start of ₹ 1,000/- plus usual allowance as admissible from time to time. The selection of the workman was made subject to the outcome of OA No.492/CH/1993 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, Chandigarh. Consequent upon the reinstatement of under suspension Conductors the services of the workman was ordered to be discontinued with immediate effect *vide* order dated 22.04.1994, which is within 190 days of selection order dated 18.06.1993. The workman had not completed 240 days of regular service with the management. He further deposed that the management appointed 33 Conductor and 34 Drivers for 89 days on contractual basis in December 1998 and period was extended for time to time. Till the year 2000 the appointments made by the management was through the Employment Exchange and the management has to select the candidates from the list provided by the Employment Exchange. The appointments made in the year 2014 and 2016 were advertised through public notice in the newspapers and on official website of the Chandigarh Administration as well.

10. Learned Law Officer for the management has argued that the workman is not entitled for the relief, as prayed for, as he was appointed as Conductor *vide* order dated 15.10.1993 against suspension / temporary basis subject to outcome of OA No.492/CH/1993 and consequent upon reinstatement of under suspension Conductors the services of the workman, being temporary basis, was ordered to be discontinued with effect *vide* order dated 22.04.1994. It is further argued that the workman had not completed 240 days of service so provisions of Section 24-F & 25-H of the ID Act are not applicable in the present case. He has placed reliance on citations ***Association of Chemical Workers Versus AT Alaspur, 1998(3) LLJ (Supp.) 800 (SC); State of Gujrat Versus Ramesh Mopabhai Rathod, 2004 LLR 255 (Gujarat) and State Bank of Bikaner & Jaipur Versus Union of India, 2007 LLR 222 (SN) (Jharkhan)***

11. It is further argued that the present claim is hopelessly time barred and no reasonable justification has been putforth for not filing the claim statement earlier. The present claim is bad for non-joinder of necessary parties the workman had not made Employment Exchange as necessary party. Moreover, the record of the present case is old one and appointments in the years 2014 & 2016 were made through advertisement in newspaper but the workman had never applied for the same. He prayed for dismissal of the claim of the workman.

12. After giving my careful consideration the rival contentions of both the parties. It is admitted case of the parties that the workman was appointed *vide* order dated 15.10.1993 on purely temporary basis and he remained in service till 22.04.1994. He was disengaged on 22.04.1994 on the ground that consequent upon the reinstatement of the under suspension Conductors, the services of the temporary Conductors are discontinued with immediate effect.

13. The workman had proved application dated 23.08.2018 under Right to Information Act Exhibit 'AW1/1'; information supplied under Right to Information Act *vide* letter dated 11.12.2018 Exhibit 'AW1/2'; letter dated 18.05.1998 regarding filling up the post of Drivers & Conductors on contractual basis Exhibit 'AW1/3'; representation to the Home Secretary, Chandigarh Administration against order of discontinuation of service Exhibit 'AW1/4'; newspaper cutting Exhibit 'AW1/5'; advertisement for recruitment of Bus Drivers and Conductors Exhibit 'AW1/6' and appointment letter dated 02.12.1998 of Shri Hans Raj as Bus Conductor on contract basis Exhibit 'AW1/7' whereas the management had proved appointment letter dated 18.06.1993 Exhibit 'MW1/1'; appointment order dated 15.10.1993 Exhibit 'MW1/2'; order dated 22.04.1994 regarding discontinuation of services of temporary Conductors Exhibit 'MW1/3' and advertisement made in the year 2016 for appointment of Bus Conductors on regular basis Exhibit 'MW1/4'.

14. As per record it is not denied by the management that appointment of 33 Conductors and 35 Drivers were made on contractual basis in December 1999 and their period was extended from time to time and 19 posts of Conductors was also made on regular post in the year 2001 *vide* advertisement No.2/ECC/ECD/CTU/2001. Thereafter the regular appointments were made in the year 2000, 2001, 2014 & 2016. The main bone of contention between the parties is regarding reemployment of the workman whereas the management is vehemently argued that the workman is not entitled for reemployment / reinstatement as the workman had approached the Court after a long delay so claim is badly time barred and secondly he has not made party to the Employment Exchange, Union Territory Chandigarh, who is to consider the name of the workman for the recruitment.

15. It is very much clear that the workman had approached the court with more than 28 years whereas the management had already published the advertisement in leading newspapers and on the official website of Chandigarh Administration for the appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 but the workman had never applied to the said posts. Hence from the year 1994 the workman kept mum and has never approached the management as well as Employment Exchange to enter their name for consideration of reemployment rather he had also not made party to the Employment Exchange, Union Territory Chandigarh, who can better tell why the name of the workman deleted or not carry-forwarded for further reemployment. Now after lapse of 28 years, as per reply of the management they are not in a position to bring the record being old one. Although there is no time limit to make reference under Section 10 of the ID Act but **there must be reasonable justification under for the delay.** In this regard reliance is made on citation titled as *Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)* wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was *ex facie* bad and incompetent."

Further, similar views have been observed in citation *Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No. 4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court*. In the present case in hand, no reasonable justification has been put forth by the workman for delay of more than 28 years. The workman is simply relying on citation *Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh (supra)* but had not made any efforts for such long time.

16. In the light of discussion made above, it is held that the claim of the workman is hopelessly time barred and bad for non-joinder of necessary party i.e. Employment Exchange, Union Territory Chandigarh so the workman is not entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management. Accordingly, issue No.1 is decided against the workman and in favour of the management whereas issue No.2 & 3 is decided in favour of the management and against the workman.

Relief :—

17. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 10th February, 2022.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th March, 2022

No. 13/1/9848-HII(2)-2022/4526.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award dated 10.02.2022 bearing reference No. 33/2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

HARCHARAN SINGH S/O SHRI JIT SINGH, VILLAGE & POST OFFICE NOGAWAN,
TEHSIL BASSI PATHANA, DISTRICT FATEHGARH SAHIB, PUNJAB (Workman)

AND

DIRECTOR TRANSPORT, CHANDIGARH TRANSPORT UNDERTAKING, PLOT NO.701,
INDUSTRIAL AREA, PHASE - I, CHANDIGARH (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor on the requisition in the year 1993 against the regular vacancies of Conductors and he was interviewed along with other candidates in May 1993 by the duly constituted selection committee by the management and the workman was issued selection letter in June 1993 stating that he has been selected for the post of Conductor in the pay

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scale of ₹950-1800 (with initial start of ₹1000/-) Plus usual allowances admissible from time to time and further his selection is subject to decision/outcome of O.A. NO. 4492/1993 filed by Mohinder Pal Soni & others which was pending before CAT Chandigarh Bench against cancellation of their regular selection (which was dismissed subsequently) and further workman was directed to report the office of management for completion of further formalities such as medical examination, Security Deposit, crash training on or before 28.06.1993. After medical examination, security deposit, declaration workman was deputed for one month Training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including the workman for the appointment to the post of Conductors against suspension / leave vacancy on purely temporary basis in pay scale ₹950-1800 (with initial start of ₹1,000/-) plus usual allowances from time to time and it was first time mentioned in the appointment letter that appointment is against suspension/leave vacancy without mentioning any specific period and the workman joined as per appointment letter and continuously working with the management but his services were disengaged on 22.04.1994 on the ground that on consequent upon re-instatement of the under suspension Conductors, the services of the following temporary Conductors, who were appointed against suspension vacancies are hereby discontinued with immediate effect being no longer required. The workman along with other filed O.A. No. 1000/ PB/1994 before CAT Chandigarh challenging the termination on the ground that their appointment was regular after following the procedure under the rules and was against regular after following the procedure under the rules and was against regular vacancies available with management but O.A. No.1000/1994 was dismissed by the CAT Chandigarh on the ground that as per appointment letter dated 15.10.1993 their appointment was temporary was also upheld by the Hon'ble High Court and Hon'ble Supreme Court of India. The workman and his colleagues has come to know in the month August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and period was extended from time to time and also made appointment to the posts of Conductors in subsequent years without affording any opportunity to the workman who was the retrenched employee of the management and therefore the workman along with other six persons made application dated 23.08.2018 under RTI Act for seeking information under RTI Act regarding appointments made for the posts of the Conductors from 01.05.1994 to 20.08.2018 and the workman received reply dated 11. 12.2018 from the management under RTI which shows 40 Conductors were given regular appointment in 2000, 240 Conductors were given regular appointment in 2016, but without giving preference and opportunity to the workman at the time of making aforesaid appointments as provided in Section 25-H of the ID Act. The management intentionally did not give reply to the appointment made in December 1998 of 33 conductors on contractual basis, some of them were made regular and appointed of 19 posts of Conductors which was made on regular basis made in year 2001 vide Advertisement No.2/ECC/ECD/CTU/2001 and last date to receive the application was 27.08.2001 at 3 P.M.

The workman who had also worked as Conductor from 15.10.1993 to 22.04.1994 with management and was retrenched due to non availability of work and vacancies of Conductors but management while making the appointments for the posts of Conductors in December 1998 on 89 days on contractual basis and making regular appointment to the posts of Conductors in subsequent years in 2000, 2001, 2014 and 2016 without giving opportunity to the workman has violated Section 25-H of the ID Act. The management had also violated Rule 77 of Industrial Disputes (Central) Rules, 1957 regarding maintenance of seniority list of retrenched workmen in the particular category according to their service and further management has violated Rule 78 of Industrial Disputes (Central) Rules, 1957 regarding Re-employment of retrenched workmen wherein procedure has been prescribed for re-employment of the retrenched workmen which was mandatory for the management to follow before filling up the future vacancies. The workman, who was retrenched employee from the management and was retrenched due to non availability of work and vacancies of the Conductors. The appointment were made to the post of Conductors on contractual basis for the period of 89 days basis initially in December 1998 extended time to time and when regular selection and appointments were made subsequently to the posts of Conductors in the year 2000, 2001, 2014 and 2016 without affording opportunity to the workman, the management has denied opportunity to him and has violated Section 25-H of ID Act and action of the management amounts unfair labor practice and thus management also violated Section 25-T of the ID Act

and thus the workman is entitled firstly to reinstatement as conductor from December 1998 along with consequential benefits from the date 33 conductors were appointed on contractual basis initially period of 89 days basis which was extended from time to time and made regular subsequently by the reinstatement as conductor from the date of regular appointments were made to the post of conductors in the year 2000, 2001, 2014 and 2016. The name of the workman was registered with Regional Employment Exchange, Union Territory Chandigarh and when the management sent requisition for filling up the posts of Conductors on regular basis in the pay scale and the name of workman was sponsored by the Employment Exchange to the management for the recruitment to the post of Conductors and the management given information regarding regular appointment to the Regional Employment Exchange, the name of the workman was deleted from the register of the Employment Exchange. Had the management informed to the employment exchange that appointment which was being made to the posts of Conductors was not regular then his name would not have been deleted from the register of the employment exchange and his name would have been sponsored to the subsequent regular appointment made in the year 2000, 2001, 2014 and 2016. His name would have been sponsored to any other Government job after his retrenchment. The workman is unemployed from the date of his retrenchment and is not gainfully employed anywhere from the date of his retrenchment. Ultimately, it is prayed that the workman be reinstated into service along with consequential benefits firstly from when 33 conductors were appointed on contractual basis initially for a period of 89 days and were allowed to continue from time to time and later on made regular by management without affording opportunity to the workman and secondly alternative relief of reinstatement along with consequential benefits be given to the workman from the date of subsequent regular appointments were made in the year 2000, 2001, 2014 and 2016 on regular basis to the post of Conductors without giving opportunity to the workman.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the present claim of the workman is badly time barred as the same relates to the events happened about 28 years back. The workman was sponsored by the Employment Exchange, Union Territory Chandigarh for recruitment to the post of Conductor as demanded by the management in the year 1993 so the employment exchange is necessary party in the instant demand notice. On merits, it is pleaded that since the appointments of 33 Conductor and 35 Drivers for 89 days on contractual basis in December 1998, if so made, was very old so despite of best possible efforts made by the management the record is not traceable. Till the year 2000 the appointments made by the management was made through the employment exchange and management had to select the candidate by following the due processes from the list provided by the employment exchange so the employment exchange is the necessary party to answer why the name of the workman was not forwarded to the management for consideration of employment in the year 1998. The appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 was made through the public advertisement in the leading newspapers and on the official website of Chandigarh Administration. The averments made regarding management intentionally did not given the reply to the RTI regarding appointment in the year 1998 and 2001 is beyond the jurisdiction of this Hon'ble court as if the workman was aggrieved with the information provided under RTI Act, he must approach to the Appellate Authority appointed under RTI Act, 2005 or to the Hon'ble CIC, New Delhi. The workman had worked as Conductor from 15.10.1993 to 22.04.1994 with the management and his services were discontinued with immediate effect being no longer required. As appointments, if so made, in the year 1998 and 2000 were made from candidates sponsored by the Employment Exchange, U.T., Chandigarh, after taking interview by the management whereas the appointments made in the year 2004 and 2016 were advertised through public notice in the leading newspapers and on the official website of the Chandigarh Administration as well but the workmen were never applied for the same. The management never violated Section 25-H of the ID Act as the same will be applicable to all the retrenched workmen who have been in continuous service for not less than one year. Also, the preference shall be confined to such workmen as would be able to establish that they had worked for a period of one year with or without a break, prior to their termination. In the instant case, the workman has not completed his 240 days of service with or without break with the respondent management as the services of the workman were discontinued by the respondent management after 190 days only. The workman registered his name with the Employment Exchange, Union

Territory, Chandigarh as they were sponsored by employment exchange in the year 1993 against the vacancies available with the management. The workman was not covered under Section 25-F & 25-H of the ID Act. The information given to employment exchange that the appointment which is being made to the post of conductor was not regular is not traceable despite of best possible efforts made by the management as the same relates to the events happened about 28 years back. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed :—

1. Whether the workman is entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management ? OPW
2. Whether the claim of the workman is time barred ? OPM
3. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
4. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Daljit Singh - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No.1 to 3 :

7. Onus to prove issue No.1 was on the workman whereas onus to prove issue No. 2 & 3 was on the management but all these issues are taken up together for the sake of convenience to avoid repetition. In support of his case, the workman examined himself as AW1 and deposed that on the requisition sent by the management for filling the regular posts of Conductors in the year 1993, his name was sent by the Employment Exchange, Union Territory Chandigarh and he was interviewed along with others. Thereafter in June 1993 selection was issued to him stating that he has been selected for the post of the Conductor in the pay of ₹950-1800, subject to decision of OA No.492/1993 pending before the Hon'ble Central Administrative Tribunal, Chandigarh Bench and directing him to complete formalities as medical examination, security deposit, crash training on or before 28.06.1993. He also deposed that after completion of all the formalities he was deputed for one month training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including himself stating that his appointment is against suspension / leave vacancy on purely temporary basis in the pay scale ₹ 950-1800, which was different condition than the condition imposed in the selection letter. His services were terminated / retrenched on 22.04.1994 on the ground no longer required on consequent upon reinstatement of the under suspension Conductors. He along with others filed OA No.1000-PB/1994 before the CAT, Chandigarh Bench, which was dismissed. He further deposed that he and his other colleagues came to know in the month of August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and they were allowed to continue from time to time and thereafter made regular for the post of Conductors without giving opportunity to him. In reply dated 11.12.2018 to the application dated 23.08.2018 under RTI Act, the management had admitted 40 Conductors in the year 2000, 240 Conductors in the year 2014 and 108 Conductors in the year 2016 were given regular appointment and willfully & intentionally not given reply to the appointment made in December 1998 as it is evident from judgment dated 30.01.2002 passed by the CAT, Chandigarh that 33 Conductors were appointed in December 1998. Vide letter dated 18.05.1998 permission regarding engaging Conductors from Chandigarh Administration was sought. The management while making recruitment / appointment for the post of Conductors has violated Section 25-H of the ID Act and also violated Rule 77 & 78 of the Industrial Disputes (Central) Rules, 1957. He further deposed that on the representation

made by him and others, Chandigarh Administration has ordered inquiry with regard to posts of Conductors filled up by the management in the year 1993, in which it is stated by the Inquiry Officer that retrenched Conductors were duly selected by the committee and appointment after following the due procedure prescribed but they have been retrenched after short spell due to non-availability of vacancies so they be adjusted against future vacancies. He also deposed that since the management sent letter to the Employment Exchange for filing up regular posts so after sponsoring the name of himself to the management and consequent upon selection his name might have been deleted from the register of Employment Exchange due to this reason his name was not sponsored in the year 1998 and 2000. In May 1993 Employment Exchange sent a list of 400 candidates to the management out of which 90 Conductors including himself & other were selected but when in the year 1998 and 2000 when appointment for the post of Conductors were made on contract basis and regular basis no requisition was sent to the Employment Exchange and the Conductors were selected and appointed from old list of 400 Conductors received in the year 1993 without affording opportunity to him.

8. Learned representative for the workman has argued that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor in the year 1993 and he was selected for the post of Conductor and he was directed to report the office of the management after necessary formalities on or before 28.06.1993 and it was for the first time mentioned in the appointment letter that the appointment is against suspension / leave vacancy without mentioning any specific period. It is further argued that the workman and his colleagues came to know that in August 2018 that the management had appointed 33 Conductors and 35 Drivers for 89 days in December 1998 and period was extended from time to time but the management had not given any opportunity to the workman who was retrenched employee of the management. He has placed on record information sought under the Right to Information Act with regard to it. Hence, the respondent has violated the provisions of Industrial Disputes (Central) Rules, 1957. Thereafter the post of Conductor in the year 2000, 2001, 2014 & 2016 was also filled by the management without affording opportunity to the workman in violation of Section 25-H of the ID Act which amounts to unfair labour practice. He placed reliance of citation *Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh, 2019(1) SCC (L&S) 491* and prayed for reinstatement of the workman along with consequential benefits from the date subsequent appointments made by the management in the year 2000, 2001, 2014 & 2106.

9. On the other hand, learned Law Officer for the management has examined Shri Daljit Singh - Senior Assistant as MW1, who deposed that since the instant demand notice relates to events happened around 28 year back so the complete record is not traceable. As per the minute record available in the office, the workman was sponsored by the Employment Exchange, Union Territory Chandigarh for the recruitment to the post of Conductor in the year 1993. The workman was appointed as Conductor vide order dated 15.10.1993 against suspension purely on temporary basis in the pay scale of ₹950-1800 with the initial start of ₹1,000/- plus usual allowance as admissible from time to time. The selection of the workman was made subject to the outcome of OA No.492/CH/1993 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, Chandigarh. Consequent upon the reinstatement of under suspension Conductors the services of the workman was ordered to be discontinued with immediate effect vide order dated 22.04.1994, which is within 190 days of selection order dated 18.06.1993. The workman had not completed 240 days of regular service with the management. He further deposed that the management appointed 33 Conductor and 34 Drivers for 89 days on contractual basis in December 1998 and period was extended for time to time. Till the year 2000 the appointments made by the management was through the Employment Exchange and the management has to select the candidates from the list provided by the Employment Exchange. The appointments made in the year 2014 and 2016 were advertised through public notice in the newspapers and on official website of the Chandigarh Administration as well.

10. Learned Law Officer for the management has argued that the workman is not entitled for the relief, as prayed for, as he was appointed as Conductor *vide* order dated 15.10.1993 against suspension / temporary basis subject to outcome of OA No.492/CH/1993 and consequent upon reinstatement of under suspension Conductors the services of the workman, being temporary basis, was ordered to be discontinued with effect *vide* order dated 22.04.1994. It is further argued that the workman had not completed 240 days of service so provisions of Section 24-F & 25-H of the ID Act are not applicable in the present case. He has placed reliance on citations *Association of Chemical Workers Versus AT Alaspur, 1998(3) LLJ (Supp.) 800 (SC); State of Gujrat Versus Ramesh Mopabhai Rathod, 2004 LLR 255 (Gujarat) and State Bank of Bikaner & Jaipur Versus Union of India, 2007 LLR 222 (SN) (Jharkhan)*

11. It is further argued that the present claim is hopelessly time barred and no reasonable justification has been putforth for not filing the claim statement earlier. The present claim is bad for non-joinder of necessary parties the workman had not made Employment Exchange as necessary party. Moreover, the record of the present case is old one and appointments in the years 2014 & 2016 were made through advertisement in newspaper but the workman had never applied for the same. He prayed for dismissal of the claim of the workman.

12. After giving my careful consideration the rival contentions of both the parties. It is admitted case of the parties that the workman was appointed *vide* order dated 15.10.1993 on purely temporary basis and he remained in service till 22.04.1994. He was disengaged on 22.04.1994 on the ground that consequent upon the reinstatement of the under suspension Conductors, the services of the temporary Conductors are discontinued with immediate effect.

13. The workman had proved application dated 23.08.2018 under Right to Information Act Exhibit 'AW1/1'; information supplied under Right to Information Act *vide* letter dated 11.12.2018 Exhibit 'AW1/2'; letter dated 18.05.1998 regarding filling up the post of Drivers & Conductors on contractual basis Exhibit 'AW1/3'; representation to the Home Secretary, Chandigarh Administration against order of discontinuation of service Exhibit 'AW1/4'; newspaper cutting Exhibit 'AW1/5'; advertisement for recruitment of Bus Drivers and Conductors Exhibit 'AW1/6' and appointment letter dated 02.12.1998 of Shri Hans Raj as Bus Conductor on contract basis Exhibit 'AW1/7' whereas the management had proved appointment letter dated 18.06.1993 Exhibit 'MW1/1'; appointment order dated 15.10.1993 Exhibit 'MW1/2'; order dated 22.04.1994 regarding discontinuation of services of temporary Conductors Exhibit 'MW1/3' and advertisement made in the year 2016 for appointment of Bus Conductors on regular basis Exhibit 'MW1/4'.

14. As per record it is not denied by the management that appointment of 33 Conductors and 35 Drivers were made on contractual basis in December 1999 and their period was extended from time to time and 19 posts of Conductors was also made on regular post in the year 2001 *vide* advertisement No.2/ECC/ECD/CTU/2001. Thereafter the regular appointments were made in the year 2000, 2001, 2014 & 2016. The main bone of contention between the parties is regarding reemployment of the workman whereas the management is vehemently argued that the workman is not entitled for reemployment / reinstatement as the workman had approached the Court after a long delay so claim is badly time barred and secondly he has not made party to the Employment Exchange, Union Territory Chandigarh, who is to consider the name of the workman for the recruitment.

15. It is very much clear that the workman had approached the court with more than 28 years whereas the management had already published the advertisement in leading newspapers and on the official website of Chandigarh Administration for the appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 but the workman had never applied to the said posts. Hence from the year 1994 the workman kept mum and has never approached the management as well as Employment Exchange to enter their name for consideration of reemployment rather he had also not made party to the Employment Exchange, Union Territory Chandigarh, who can better tell why the name of the workman deleted or not carry-forwarded for further reemployment. Now after lapse of 28 years, as per reply of the management they are not in a position

to bring the record being old one. Although there is no time limit to make reference under Section 10 of the ID Act but **there must be reasonable justification under for the delay.** In this regard reliance is made on citation titled as *Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)* wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was *ex facie* bad and incompetent."

Further, similar views have been observed in citation *Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court.* In the present case in hand, no reasonable justification has been put forth by the workman for delay of more than 28 years. The workman is simply relying on citation *Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh (supra)* but had not made any efforts for such long time.

16. In the light of discussion made above, it is held that the claim of the workman is hopelessly time barred and bad for non-joinder of necessary party i.e. Employment Exchange, Union Territory Chandigarh so the workman is not entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management. Accordingly, issue No.1 is decided against the workman and in favour of the management whereas issue No.2 & 3 is decided in favour of the management and against the workman.

Relief :

17. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 10th February, 2022.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 28th March, 2022

No. 13/1/9846-HII(2)-2022/4520.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award dated 10.02.2022 bearing reference No. 31/2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

AVTAR SINGH S/O SHRI AJIT SINGH, VILLAGE DEVI NAGAR (ABRAWAN),
POST OFFICE MANAKPUR, TEHSIL & DISTRICT MOHALI (Workman)

AND

DIRECTOR TRANSPORT, CHANDIGARH TRANSPORT UNDERTAKING, PLOT NO. 701,
INDUSTRIAL AREA, PHASE - I, CHANDIGARH (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor on the requisition in the year 1993 against the regular vacancies of Conductors and he was interviewed along with other candidates in May 1993 by the duly constituted selection committee by the management and the workman was issued selection letter in June 1993 stating that he has been selected for the post of Conductor in the pay scale of ₹950-1800 (with initial start of ₹1000/-) Plus usual allowances admissible from time to time and further his selection is subject to decision/outcome of O.A. NO. 4492/1993 filed by Mohinder Pal Soni & others which was pending before CAT Chandigarh Bench against cancellation of their regular selection (which was dismissed subsequently) and further workman was directed to report the office of management for completion of further formalities such as medical examination, Security Deposit, crash training on or before 28.06.1993. After medical examination, security deposit, declaration workman was deputed for one month Training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including the workman for the appointment to the post of Conductors against suspension / leave vacancy on purely temporary basis in pay scale ₹ 950-1800 (with initial start of ₹1,000/-) plus usual allowances from time to time and it was first time mentioned in the appointment letter that appointment is against suspension/leave vacancy without mentioning any specific period and the workman joined as per appointment letter and continuously working with the management but his services were disengaged on 22.04.1994 on the ground that on consequent upon re-instatement of the under suspension Conductors, the services of the following temporary Conductors, who were appointed against suspension vacancies are hereby discontinued with immediate effect being no longer required. The workman along with other filed O.A. No. 1000/ PB/1994 before CAT Chandigarh challenging the termination on the ground that their appointment was regular after following the procedure under the rules and was against regular after following the procedure under the rules and was against regular vacancies available with management but O.A. No.1000/1994 was dismissed by the CAT Chandigarh on the ground that as per appointment letter dated 15.10.1993 their appointment was temporary was also upheld by the Hon'ble High Court and Hon'ble Supreme Court of India. The workman and his colleagues has come to know in the month August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and period was extended from time to time and also made appointment to the posts of Conductors in subsequent years without affording any opportunity to the workman who was the

retrenched employee of the management and therefore the workman along with other six persons made application dated 23.08.2018 under RTI Act for seeking information under RTI Act regarding appointments made for the posts of the Conductors from 01.05.1994 to 20.08.2018 and the workman received reply dated 11. 12.2018 from the management under RTI which shows 40 Conductors were given regular appointment in 2000, 240 Conductors were given regular appointment in 2016, but without giving preference and opportunity to the workman at the time of making aforesaid appointments as provided in Section 25-H of the ID Act. The management intentionally did not give reply to the appointment made in December 1998 of 33 conductors on contractual basis, some of them were made regular and appointed of 19 posts of Conductors which was made on regular basis made in year 2001 vide Advertisement No.2/ECC/ECD/CTU/2001 and last date to receive the application was 27.08.2001 at 3 P.M.

The workman who had also worked as Conductor from 15.10.1993 to 22.04.1994 with management and was retrenched due to non availability of work and vacancies of Conductors but management while making the appointments for the posts of Conductors in December 1998 on 89 days on contractual basis and making regular appointment to the posts of Conductors in subsequent years in 2000, 2001, 2014 and 2016 without giving opportunity to the workman has violated Section 25-H of the ID Act. The management had also violated Rule 77 of Industrial Disputes (Central) Rules, 1957 regarding maintenance of seniority list of retrenched workmen in the particular category according to their service and further management has violated Rule 78 of Industrial Disputes (Central) Rules, 1957 regarding Re-employment of retrenched workmen wherein procedure has been prescribed for re-employment of the retrenched workmen which was mandatory for the management to follow before filling up the future vacancies. The workman, who was retrenched employee from the management and was retrenched due to non availability of work and vacancies of the Conductors. The appointment were made to the post of Conductors on contractual basis for the period of 89 days basis initially in December 1998 extended time to time and when regular selection and appointments were made subsequently to the posts of Conductors in the year 2000, 2001, 2014 and 2016 without affording opportunity to the workman, the management has denied opportunity to him and has violated Section 25-H of ID Act and action of the management amounts unfair labor practice and thus management also violated Section 25-T of the ID Act and thus the workman is entitled firstly to reinstatement as conductor from December 1998 along with consequential benefits from the date 33 conductors were appointed on contractual basis initially period of 89 days basis which was extended from time to time and made regular subsequently by the reinstatement as conductor from the date of regular appointments were made to the post of conductors in the year 2000, 2001, 2014 and 2016. The name of the workman was registered with Regional Employment Exchange, Union Territory Chandigarh and when the management sent requisition for filling up the posts of Conductors on regular basis in the pay scale and the name of workman was sponsored by the Employment Exchange to the management for the recruitment to the post of Conductors and the management given information regarding regular appointment to the Regional Employment Exchange, the name of the workman was deleted from the register of the Employment Exchange. Had the management informed to the employment exchange that appointment which was being made to the posts of Conductors was not regular then his name would not have been deleted from the register of the employment exchange and his name would have been sponsored to the subsequent regular appointment made in the year 2000, 2001, 2014 and 2016. His name would have been sponsored to any other Government job after his retrenchment. The workman is unemployed from the date of his retrenchment and is not gainfully employed anywhere from the date of his retrenchment. Ultimately, it is prayed that the workman be reinstated into service along with consequential benefits firstly from when 33 conductors were appointed on contractual basis initially for a period of 89 days and were allowed to continue from time to time and later on made regular by management without affording opportunity to the workman and secondly alternative relief of reinstatement along with consequential benefits be given to the workman from the date of subsequent regular appointments were made in the year 2000, 2001, 2014 and 2016 on regular basis to the post of Conductors without giving opportunity to the workman.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the present claim of the workman is badly time barred as the same relates to the events happened about 28 years back. The workman was sponsored by the Employment Exchange, Union Territory Chandigarh for recruitment to the post of Conductor as demanded by the management in the year 1993 so the employment exchange is necessary party in the instant demand notice. On merits, it is pleaded that since the appointments of 33 Conductor and 35 Drivers for 89 days on contractual basis in December 1998, if so made, was very old so despite of best possible efforts made by the management the record is not traceable. Till the year 2000 the appointments made by the management was made through the employment exchange and management had to select the candidate by following the due processes from the list provided by the employment exchange so the employment exchange is the necessary party to answer why the name of the workman was not forwarded to the management for consideration of employment in the year 1998. The appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 was made through the public advertisement in the leading newspapers and on the official website of Chandigarh Administration. The averments made regarding management intentionally did not given the reply to the RTI regarding appointment in the year 1998 and 2001 is beyond the jurisdiction of this Hon'ble court as if the workman was aggrieved with the information provided under RTI Act, he must approach to the Appellate Authority appointed under RTI Act, 2005 or to the Hon'ble CIC, New Delhi. The workman had worked as Conductor from 15.10.1993 to 22.04.1994 with the management and his services were discontinued with immediate effect being no longer required. As appointments, if so made, in the year 1998 and 2000 were made from candidates sponsored by the Employment Exchange, U.T., Chandigarh, after taking interview by the management whereas the appointments made in the year 2004 and 2016 were advertised through public notice in the leading newspapers and on the official website of the Chandigarh Administration as well but the workmen were never applied for the same. The management never violated Section 25-H of the ID Act as the same will be applicable to all the retrenched workmen who have been in continuous service for not less than one year. Also, the preference shall be confined to such workmen as would be able to establish that they had worked for a period of one year with or without a break, prior to their termination. In the instant case, the workman has not completed his 240 days of service with or without break with the respondent management as the services of the workman were discontinued by the respondent management after 190 days only. The workman registered his name with the Employment Exchange, Union Territory, Chandigarh as they were sponsored by employment exchange in the year 1993 against the vacancies available with the management. The workman was not covered under Section 25-F & 25-H of the ID Act. The information given to employment exchange that the appointment which is being made to the post of conductor was not regular is not traceable despite of best possible efforts made by the management as the same relates to the events happened about 28 years back. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed :—

1. Whether the workman is entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management ? OPW
2. Whether the claim of the workman is time barred ? OPM
3. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
4. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Daljit Singh - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No. 1 to 3 :

7. Onus to prove issue No.1 was on the workman whereas onus to prove issue No.2 & 3 was on the management but all these issues are taken up together for the sake of convenience to avoid repetition. In support of his case, the workman examined himself as AW1 and deposed that on the requisition sent by the management for filling the regular posts of Conductors in the year 1993, his name was sent by the Employment Exchange, Union Territory Chandigarh and he was interviewed along with others. Thereafter in June 1993 selection was issued to him stating that he has been selected for the post of the Conductor in the pay of ₹950-1800, subject to decision of OA No.492/1993 pending before the Hon'ble Central Administrative Tribunal, Chandigarh Bench and directing him to complete formalities as medical examination, security deposit, crash training on or before 28.06.1993. He also deposed that after completion of all the formalities he was deputed for one month training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including himself stating that his appointment is against suspension / leave vacancy on purely temporary basis in the pay scale ₹ 950-1800, which was different condition than the condition imposed in the selection letter. His services were terminated / retrenched on 22.04.1994 on the ground no longer required on consequent upon reinstatement of the under suspension Conductors. He along with others filed OA No.1000-PB/1994 before the CAT, Chandigarh Bench, which was dismissed. He further deposed that he and his other colleagues came to know in the month of August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and they were allowed to continue from time to time and thereafter made regular for the post of Conductors without giving opportunity to him. In reply dated 11.12.2018 to the application dated 23.08.2018 under RTI Act, the management had admitted 40 Conductors in the year 2000, 240 Conductors in the year 2014 and 108 Conductors in the year 2016 were given regular appointment and willfully & intentionally not given reply to the appointment made in December 1998 as it is evident from judgment dated 30.01.2002 passed by the CAT, Chandigarh that 33 Conductors were appointed in December 1998. Vide letter dated 18.05.1998 permission regarding engaging Conductors from Chandigarh Administration was sought. The management while making recruitment / appointment for the post of Conductors has violated Section 25-H of the ID Act and also violated Rule 77 & 78 of the Industrial Disputes (Central) Rules, 1957. He further deposed that on the representation made by him and others, Chandigarh Administration has ordered inquiry with regard to posts of Conductors filled up by the management in the year 1993, in which it is stated by the Inquiry Officer that retrenched Conductors were duly selected by the committee and appointment after following the due procedure prescribed but they have been retrenched after short spell due to non-availability of vacancies so they be adjusted against future vacancies. He also deposed that since the management sent letter to the Employment Exchange for filling up regular posts so after sponsoring the name of himself to the management and consequent upon selection his name might have been deleted from the register of Employment Exchange due to this reason his name was not sponsored in the year 1998 and 2000. In May 1993 Employment Exchange sent a list of 400 candidates to the management out of which 90 Conductors including himself & other were selected but when in the year 1998 and 2000 when appointment for the post of Conductors were made on contract basis and regular basis no requisition was sent to the Employment Exchange and the Conductors were selected and appointed from old list of 400 Conductors received in the year 1993 without affording opportunity to him.

8. Learned representative for the workman has argued that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor in the year 1993 and he was selected for the post of Conductor and he was directed to report the office of the management after necessary formalities on or before 28.06.1993 and it was for the first time mentioned in the appointment letter that the appointment is against suspension / leave vacancy without mentioning any specific period. It is further argued that the workman and his colleagues came to know that in August 2018 that the management had appointed 33 Conductors and 35 Drivers for 89 days in December 1998 and period

was extended from time to time but the management had not given any opportunity to the workman who was retrenched employee of the management. He has placed on record information sought under the Right to Information Act with regard to it. Hence, the respondent has violated the provisions of Industrial Disputes (Central) Rules, 1957. Thereafter the post of Conductor in the year 2000, 2001, 2014 & 2016 was also filled by the management without affording opportunity to the workman in violation of Section 25-H of the ID Act which amounts to unfair labour practice. He placed reliance of citation **Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh, 2019(1) SCC (L&S) 491** and prayed for reinstatement of the workman along with consequential benefits from the date subsequent appointments made by the management in the year 2000, 2001, 2014 & 2106.

9. On the other hand, learned Law Officer for the management has examined Shri Daljit Singh - Senior Assistant as MW1, who deposed that since the instant demand notice relates to events happened around 28 year back so the complete record is not traceable. As per the minute record available in the office, the workman was sponsored by the Employment Exchange, Union Territory Chandigarh for the recruitment to the post of Conductor in the year 1993. The workman was appointed as Conductor *vide* order dated 15.10.1993 against suspension purely on temporary basis in the pay scale of ₹ 950-1800 with the initial start of ₹ 1,000/- plus usual allowance as admissible from time to time. The selection of the workman was made subject to the outcome of OA No.492/CH/1993 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, Chandigarh. Consequent upon the reinstatement of under suspension Conductors the services of the workman was ordered to be discontinued with immediate effect *vide* order dated 22.04.1994, which is within 190 days of selection order dated 18.06.1993. The workman had not completed 240 days of regular service with the management. He further deposed that the management appointed 33 Conductor and 34 Drivers for 89 days on contractual basis in December 1998 and period was extended for time to time. Till the year 2000 the appointments made by the management was through the Employment Exchange and the management has to select the candidates from the list provided by the Employment Exchange. The appointments made in the year 2014 and 2016 were advertised through public notice in the newspapers and on official website of the Chandigarh Administration as well.

10. Learned Law Officer for the management has argued that the workman is not entitled for the relief, as prayed for, as he was appointed as Conductor *vide* order dated 15.10.1993 against suspension/ temporary basis subject to outcome of OA No.492/CH/1993 and consequent upon reinstatement of under suspension Conductors the services of the workman, being temporary basis, was ordered to be discontinued with effect *vide* order dated 22.04.1994. It is further argued that the workman had not completed 240 days of service so provisions of Section 24-F & 25-H of the ID Act are not applicable in the present case. He has placed reliance on citations **Association of Chemical Workers Versus AT Alaspur, 1998(3) LLJ (Supp.) 800 (SC); State of Gujrat Versus Ramesh Mopabhai Rathod, 2004 LLR 255 (Gujarat)** and **State Bank of Bikaner & Jaipur Versus Union of India, 2007 LLR 222 (SN) (Jharkhan)**

11. It is further argued that the present claim is hopelessly time barred and no reasonable justification has been putforth for not filing the claim statement earlier. The present claim is bad for non-joinder of necessary parties the workman had not made Employment Exchange as necessary party. Moreover, the record of the present case is old one and appointments in the years 2014 & 2016 were made through advertisement in newspaper but the workman had never applied for the same. He prayed for dismissal of the claim of the workman.

12. After giving my careful consideration the rival contentions of both the parties. It is admitted case of the parties that the workman was appointed *vide* order dated 15.10.1993 on purely temporary basis and he remained in service till 22.04.1994. He was disengaged on 22.04.1994 on the ground that consequent upon the reinstatement of the under suspension Conductors, the services of the temporary Conductors are discontinued with immediate effect.

13. The workman had proved application dated 23.08.2018 under Right to Information Act Exhibit 'AW1/1'; information supplied under Right to Information Act vide letter dated 11.12.2018 Exhibit 'AW1/2'; letter dated 18.05.1998 regarding filling up the post of Drivers & Conductors on contractual basis Exhibit 'AW1/3'; representation to the Home Secretary, Chandigarh Administration against order of discontinuation of service Exhibit 'AW1/4'; newspaper cutting Exhibit 'AW1/5'; advertisement for recruitment of Bus Drivers and Conductors Exhibit 'AW1/6' and appointment letter dated 02.12.1998 of Shri Hans Raj as Bus Conductor on contract basis Exhibit 'AW1/7' whereas the management had proved appointment letter dated 18.06.1993 Exhibit 'MW1/1'; appointment order dated 15.10.1993 Exhibit 'MW1/2'; order dated 22.04.1994 regarding discontinuation of services of temporary Conductors Exhibit 'MW1/3' and advertisement made in the year 2016 for appointment of Bus Conductors on regular basis Exhibit 'MW1/4'.

14. As per record it is not denied by the management that appointment of 33 Conductors and 35 Drivers were made on contractual basis in December 1999 and their period was extended from time to time and 19 posts of Conductors was also made on regular post in the year 2001 vide advertisement No.2/ECC/ECD/CTU/2001. Thereafter the regular appointments were made in the year 2000, 2001, 2014 & 2016. The main bone of contention between the parties is regarding reemployment of the workman whereas the management is vehemently argued that the workman is not entitled for reemployment / reinstatement as the workman had approached the Court after a long delay so claim is badly time barred and secondly he has not made party to the Employment Exchange, Union Territory Chandigarh, who is to consider the name of the workman for the recruitment.

15. It is very much clear that the workman had approached the court with more than 28 years whereas the management had already published the advertisement in leading newspapers and on the official website of Chandigarh Administration for the appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 but the workman had never applied to the said posts. Hence from the year 1994 the workman kept mum and has never approached the management as well as Employment Exchange to enter their name for consideration of reemployment rather he had also not made party to the Employment Exchange, Union Territory Chandigarh, who can better tell why the name of the workman deleted or not carry-forwarded for further reemployment. Now after lapse of 28 years, as per reply of the management they are not in a position to bring the record being old one. Although there is no time limit to make reference under Section 10 of the ID Act but **there must be reasonable justification under for the delay.** In this regard reliance is made on citation titled as **Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)** wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent."

Further, similar views have been observed in citation **Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court.** In the present case in hand, no reasonable justification has been put forth by the workman for delay of more than 28 years. The workman is simply relying on citation **Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh (supra)** but had not made any efforts for such long time.

16. In the light of discussion made above, it is held that the claim of the workman is hopelessly time barred and bad for non-joinder of necessary party i.e. Employment Exchange, Union Territory Chandigarh so the workman is not entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management. Accordingly, issue No.1 is decided against the workman and in favour of the management whereas issue No.2 & 3 is decided in favour of the management and against the workman.

Relief :

17. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 10th February, 2022.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION LABOUR DEPARTMENT

Notification

The 28th March, 2022

No. 13/1/9847-HII(2)-2022/4530.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award dated 10.02.2022 bearing reference No. 32/2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

JASWINDER SINGH S/O SHRI CHARAN SINGH, VILLAGE GIDDERPUR, POST OFFICE CHADDIALA SUDAN, TEHSIL & DISTRICT MOHALI (Workman)

AND

DIRECTOR TRANSPORT, CHANDIGARH TRANSPORT UNDERTAKING, PLOT NO. 701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor on the requisition in the year 1993 against the regular vacancies of Conductors and he was interviewed along with other candidates in May 1993 by the duly constituted selection committee by the management and the workman was issued selection letter in June 1993 stating that he has been selected for the post of Conductor in the pay

scale of ₹950-1800 (with initial start of ₹1000/-) Plus usual allowances admissible from time to time and further his selection is subject to decision/outcome of O.A. NO. 4492/1993 filed by Mohinder Pal Soni & others which was pending before CAT Chandigarh Bench against cancellation of their regular selection (which was dismissed subsequently) and further workman was directed to report the office of management for completion of further formalities such as medical examination, Security Deposit, crash training on or before 28.06.1993. After medical examination, security deposit, declaration workman was deputed for one month Training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including the workman for the appointment to the post of Conductors against suspension / leave vacancy on purely temporary basis in pay scale ₹ 950-1800 (with initial start of ₹ 1,000/-) plus usual allowances from time to time and it was first time mentioned in the appointment letter that appointment is against suspension/leave vacancy without mentioning any specific period and the workman joined as per appointment letter and continuously working with the management but his services were disengaged on 22.04.1994 on the ground that on consequent upon re-instatement of the under suspension Conductors, the services of the following temporary Conductors, who were appointed against suspension vacancies are hereby discontinued with immediate effect being no longer required. The workman along with other filed O.A. No. 1000/PB/1994 before CAT Chandigarh challenging the termination on the ground that their appointment was regular after following the procedure under the rules and was against regular after following the procedure under the rules and was against regular vacancies available with management but O.A. No.1000/1994 was dismissed by the CAT Chandigarh on the ground that as per appointment letter dated 15.10.1993 their appointment was temporary was also upheld by the Hon'ble High Court and Hon'ble Supreme Court of India. The workman and his colleagues has come to know in the month August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and period was extended from time to time and also made appointment to the posts of Conductors in subsequent years without affording any opportunity to the workman who was the retrenched employee of the management and therefore the workman along with other six persons made application dated 23.08.2018 under RTI Act for seeking information under RTI Act regarding appointments made for the posts of the Conductors from 01.05.1994 to 20.08.2018 and the workman received reply dated 11. 12.2018 from the management under RTI which shows 40 Conductors were given regular appointment in 2000, 240 Conductors were given regular appointment in 2016, but without giving preference and opportunity to the workman at the time of making aforesaid appointments as provided in Section 25-H of the ID Act. The management intentionally did not give reply to the appointment made in December 1998 of 33 conductors on contractual basis, some of them were made regular and appointed of 19 posts of Conductors which was made on regular basis made in year 2001 vide Advertisement No.2/ECC/ECD/CTU/2001 and last date to receive the application was 27.08.2001 at 3 P.M.

The workman who had also worked as Conductor from 15.10.1993 to 22.04.1994 with management and was retrenched due to non availability of work and vacancies of Conductors but management while making the appointments for the posts of Conductors in December 1998 on 89 days on contractual basis and making regular appointment to the posts of Conductors in subsequent years in 2000, 2001, 2014 and 2016 without giving opportunity to the workman has violated Section 25-H of the ID Act. The management had also violated Rule 77 of Industrial Disputes (Central) Rules, 1957 regarding maintenance of seniority list of retrenched workmen in the particular category according to their service and further management has violated Rule 78 of Industrial Disputes (Central) Rules, 1957 regarding Re-employment of retrenched workmen wherein procedure has been prescribed for re-employment of the retrenched workmen which was mandatory for the management to follow before filling up the future vacancies. The workman, who was retrenched employee from the management and was retrenched due to non availability of work and vacancies of the Conductors. The appointment were made to the post of Conductors on contractual basis for the period of 89 days basis initially in December 1998 extended time to time and when regular selection and appointments were made subsequently to the posts of Conductors in the year 2000, 2001, 2014 and 2016 without affording opportunity to the workman, the management has denied opportunity to him and has violated Section 25-H of ID Act and action of the management amounts unfair labor practice and thus management also violated Section 25-T of the ID Act

and thus the workman is entitled firstly to reinstatement as conductor from December 1998 along with consequential benefits from the date 33 conductors were appointed on contractual basis initially period of 89 days basis which was extended from time to time and made regular subsequently by the reinstatement as conductor from the date of regular appointments were made to the post of conductors in the year 2000, 2001, 2014 and 2016. The name of the workman was registered with Regional Employment Exchange, Union Territory Chandigarh and when the management sent requisition for filling up the posts of Conductors on regular basis in the pay scale and the name of workman was sponsored by the Employment Exchange to the management for the recruitment to the post of Conductors and the management given information regarding regular appointment to the Regional Employment Exchange, the name of the workman was deleted from the register of the Employment Exchange. Had the management informed to the employment exchange that appointment which was being made to the posts of Conductors was not regular then his name would not have been deleted from the register of the employment exchange and his name would have been sponsored to the subsequent regular appointment made in the year 2000, 2001, 2014 and 2016. His name would have been sponsored to any other Government job after his retrenchment. The workman is unemployed from the date of his retrenchment and is not gainfully employed anywhere from the date of his retrenchment. Ultimately, it is prayed that the workman be reinstated into service along with consequential benefits firstly from when 33 conductors were appointed on contractual basis initially for a period of 89 days and were allowed to continue from time to time and later on made regular by management without affording opportunity to the workman and secondly alternative relief of reinstatement along with consequential benefits be given to the workman from the date of subsequent regular appointments were made in the year 2000, 2001, 2014 and 2016 on regular basis to the post of Conductors without giving opportunity to the workman.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the present claim of the workman is badly time barred as the same relates to the events happened about 28 years back. The workman was sponsored by the Employment Exchange, Union Territory Chandigarh for recruitment to the post of Conductor as demanded by the management in the year 1993 so the employment exchange is necessary party in the instant demand notice. On merits, it is pleaded that since the appointments of 33 Conductor and 35 Drivers for 89 days on contractual basis in December 1998, if so made, was very old so despite of best possible efforts made by the management the record is not traceable. Till the year 2000 the appointments made by the management was made through the employment exchange and management had to select the candidate by following the due processes from the list provided by the employment exchange so the employment exchange is the necessary party to answer why the name of the workman was not forwarded to the management for consideration of employment in the year 1998. The appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 was made through the public advertisement in the leading newspapers and on the official website of Chandigarh Administration. The averments made regarding management intentionally did not given the reply to the RTI regarding appointment in the year 1998 and 2001 is beyond the jurisdiction of this Hon'ble court as if the workman was aggrieved with the information provided under RTI Act, he must approach to the Appellate Authority appointed under RTI Act, 2005 or to the Hon'ble CIC, New Delhi. The workman had worked as Conductor from 15.10.1993 to 22.04.1994 with the management and his services were discontinued with immediate effect being no longer required. As appointments, if so made, in the year 1998 and 2000 were made from candidates sponsored by the Employment Exchange, U.T., Chandigarh, after taking interview by the management whereas the appointments made in the year 2004 and 2016 were advertised through public notice in the leading newspapers and on the official website of the Chandigarh Administration as well but the workmen were never applied for the same. The management never violated Section 25-H of the ID Act as the same will be applicable to all the retrenched workmen who have been in continuous service for not less than one year. Also, the preference shall be confined to such workmen as would be able to establish that they had worked for a period of one year with or without a break, prior to their termination. In the instant case, the workman has not completed his 240 days of service with or without break with the respondent management as the services of the workman were discontinued by the respondent management after 190 days only. The workman registered his name with the Employment Exchange,

Union Territory, Chandigarh as they were sponsored by employment exchange in the year 1993 against the vacancies available with the management. The workman was not covered under Section 25-F & 25-H of the ID Act. The information given to employment exchange that the appointment which is being made to the post of conductor was not regular is not traceable despite of best possible efforts made by the management as the same relates to the events happened about 28 years back. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed:-

1. Whether the workman is entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management ? OPW
2. Whether the claim of the workman is time barred ? OPM
3. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
4. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Daljit Singh - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

Issue No.1 to 3 :

7. Onus to prove issue No.1 was on the workman whereas onus to prove issue No.2 & 3 was on the management but all these issues are taken up together for the sake of convenience to avoid repetition. In support of his case, the workman examined himself as AW1 and deposed that on the requisition sent by the management for filling the regular posts of Conductors in the year 1993, his name was sent by the Employment Exchange, Union Territory Chandigarh and he was interviewed along with others. Thereafter in June 1993 selection was issued to him stating that he has been selected for the post of the Conductor in the pay of ₹ 950-1800, subject to decision of OA No.492/1993 pending before the Hon'ble Central Administrative Tribunal, Chandigarh Bench and directing him to complete formalities as medical examination, security deposit, crash training on or before 28.06.1993. He also deposed that after completion of all the formalities he was deputed for one month training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including himself stating that his appointment is against suspension / leave vacancy on purely temporary basis in the pay scale ₹ 950-1800, which was different condition than the condition imposed in the selection letter. His services were terminated / retrenched on 22.04.1994 on the ground no longer required on consequent upon reinstatement of the under suspension Conductors. He along with others filed OA No.1000-PB/1994 before the CAT, Chandigarh Bench, which was dismissed. He further deposed that he and his other colleagues came to know in the month of August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and they were allowed to continue from time to time and thereafter made regular for the post of Conductors without giving opportunity to him. In reply dated 11.12.2018 to the application dated 23.08.2018 under RTI Act, the management had admitted 40 Conductors in the year 2000, 240 Conductors in the year 2014 and 108 Conductors in the year 2016 were given regular appointment and willfully & intentionally not given reply to the appointment made in December 1998 as it is evident from judgment dated 30.01.2002 passed by the CAT, Chandigarh that 33 Conductors were appointed in December 1998. Vide letter dated 18.05.1998 permission regarding engaging Conductors from Chandigarh Administration was sought. The management while making recruitment / appointment for the post of Conductors has violated Section 25-H of the ID Act and also violated Rule 77 & 78 of the Industrial Disputes (Central) Rules, 1957. He further deposed that on the representation

made by him and others, Chandigarh Administration has ordered inquiry with regard to posts of Conductors filled up by the management in the year 1993, in which it is stated by the Inquiry Officer that retrenched Conductors were duly selected by the committee and appointment after following the due procedure prescribed but they have been retrenched after short spell due to non-availability of vacancies so they be adjusted against future vacancies. He also deposed that since the management sent letter to the Employment Exchange for filing up regular posts so after sponsoring the name of himself to the management and consequent upon selection his name might have been deleted from the register of Employment Exchange due to this reason his name was not sponsored in the year 1998 and 2000. In May 1993 Employment Exchange sent a list of 400 candidates to the management out of which 90 Conductors including himself & other were selected but when in the year 1998 and 2000 when appointment for the post of Conductors were made on contract basis and regular basis no requisition was sent to the Employment Exchange and the Conductors were selected and appointed from old list of 400 Conductors received in the year 1993 without affording opportunity to him.

8. Learned representative for the workman has argued that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor in the year 1993 and he was selected for the post of Conductor and he was directed to report the office of the management after necessary formalities on or before 28.06.1993 and it was for the first time mentioned in the appointment letter that the appointment is against suspension / leave vacancy without mentioning any specific period. It is further argued that the workman and his colleagues came to know that in August 2018 that the management had appointed 33 Conductors and 35 Drivers for 89 days in December 1998 and period was extended from time to time but the management had not given any opportunity to the workman who was retrenched employee of the management. He has placed on record information sought under the Right to Information Act with regard to it. Hence, the respondent has violated the provisions of Industrial Disputes (Central) Rules, 1957. Thereafter the post of Conductor in the year 2000, 2001, 2014 & 2016 was also filled by the management without affording opportunity to the workman in violation of Section 25-H of the ID Act which amounts to unfair labour practice. He placed reliance of citation **Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh, 2019(1) SCC (L&S) 491** and prayed for reinstatement of the workman along with consequential benefits from the date subsequent appointments made by the management in the year 2000, 2001, 2014 & 2016.

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10. Learned Law Officer for the management has argued that the workman is not entitled for the relief, as prayed for, as he was appointed as Conductor vide order dated 15.10.1993 against suspension/ temporary basis subject to outcome of OA No.492/CH/1993 and consequent upon reinstatement of under suspension Conductors the services of the workman, being temporary basis, was ordered to be discontinued with effect vide order dated 22.04.1994. It is further argued that the workman had not completed 240 days of service so provisions of Section 24-F & 25-H of the ID Act are not applicable in the present case. He has placed reliance on citations **Association of Chemical Workers Versus AT Alaspur, 1998(3) LLJ (Supp.) 800 (SC); State of Gujrat Versus Ramesh Mopabhai Rathod, 2004 LLR 255 (Gujarat) and State Bank of Bikaner & Jaipur Versus Union of India, 2007 LLR 222 (SN) (Jharkhan)**

11. It is further argued that the present claim is hopelessly time barred and no reasonable justification has been putforth for not filing the claim statement earlier. The present claim is bad for non-joinder of necessary parties the workman had not made Employment Exchange as necessary party. Moreover, the record of the present case is old one and appointments in the years 2014 & 2016 were made through advertisement in newspaper but the workman had never applied for the same. He prayed for dismissal of the claim of the workman.

12. After giving my careful consideration the rival contentions of both the parties. It is admitted case of the parties that the workman was appointed vide order dated 15.10.1993 on purely temporary basis and he remained in service till 22.04.1994. He was disengaged on 22.04.1994 on the ground that consequent upon the reinstatement of the under suspension Conductors, the services of the temporary Conductors are discontinued with immediate effect.

13. The workman had proved application dated 23.08.2018 under Right to Information Act Exhibit 'AW1/1'; information supplied under Right to Information Act vide letter dated 11.12.2018 Exhibit 'AW1/2'; letter dated 18.05.1998 regarding filling up the post of Drivers & Conductors on contractual basis Exhibit 'AW1/3'; representation to the Home Secretary, Chandigarh Administration against order of discontinuation of service Exhibit 'AW1/4'; newspaper cutting Exhibit 'AW1/5'; advertisement for recruitment of Bus Drivers and Conductors Exhibit 'AW1/6' and appointment letter dated 02.12.1998 of Shri Hans Raj as Bus Conductor on contract basis Exhibit 'AW1/7' whereas the management had proved appointment letter dated 18.06.1993 Exhibit 'MW1/1', appointment order dated 15.10.1993 Exhibit 'MW1/2'; order dated 22.04.1994 regarding discontinuation of services of temporary Conductors Exhibit 'MW1/3' and advertisement made in the year 2016 for appointment of Bus Conductors on regular basis Exhibit 'MW1/4'.

14. As per record it is not denied by the management that appointment of 33 Conductors and 35 Drivers were made on contractual basis in December 1999 and their period was extended from time to time and 19 posts of Conductors was also made on regular post in the year 2001 vide advertisement No.2/ ECC/ECD/CTU/2001. Thereafter the regular appointments were made in the year 2000, 2001, 2014 & 2016. The main bone of contention between the parties is regarding reemployment of the workman whereas the management is vehemently argued that the workman is not entitled for reemployment / reinstatement as the workman had approached the Court after a long delay so claim is badly time barred and secondly he has not made party to the Employment Exchange, Union Territory Chandigarh, who is to consider the name of the workman for the recruitment.

15. It is very much clear that the workman had approached the court with more than 28 years whereas the management had already published the advertisement in leading newspapers and on the official website of Chandigarh Administration for the appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 but the workman had never applied to the said posts. Hence from the year 1994 the workman kept mum and has never approached the management as well as Employment Exchange to enter their name for consideration of reemployment rather he had also not made party to the Employment Exchange, Union

Territory Chandigarh, who can better tell why the name of the workman deleted or not carry-forwarded for further reemployment. Now after lapse of 28 years, as per reply of the management they are not in a position to bring the record being old one. Although there is no time limit to make reference under Section 10 of the ID Act but **there must be reasonable justification under for the delay.** In this regard reliance is made on citation titled as **Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)** wherein the Hon'ble Supreme Court of India as held as under :—

"5. *Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent.*"

Further, similar views have been observed in citation **Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court.** In the present case in hand, no reasonable justification has been putforth by the workman for delay of more than 28 years. The workman is simply relying on citation **Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh (supra)** but had not made any efforts for such long time.

16. In the light of discussion made above, it is held that the claim of the workman is hopelessly time barred and bad for non-joinder of necessary party i.e. Employment Exchange, Union Territory Chandigarh so the workman is not entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management. Accordingly, issue No.1 is decided against the workman and in favour of the management whereas issue No.2 & 3 is decided in favour of the management and against the workman.

Relief :

17. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 10th February, 2022.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th March, 2022

No. 13/1/9849-HII(2)-2022/4532—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award dated 10.02.2022 bearing reference No. 43/2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KAMALJIT SINGH S/O SHRI GURDIAL SINGH, VILLAGE SINGH, POST OFFICE DIAYALPURA, TEHSIL DERABASSI, DISTRICT MOHALI, PUNJAB (Workman)

AND

DIRECTOR TRANSPORT, CHANDIGARH TRANSPORT UNDERTAKING, PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor on the requisition in the year 1993 against the regular vacancies of Conductors and he was interviewed along with other candidates in May 1993 by the duly constituted selection committee by the management and the workman was issued selection letter in June 1993 stating that he has been selected for the post of Conductor in the pay scale of ₹ 950-1800 (with initial start of ₹ 1000/-) Plus usual allowances admissible from time to time and further his selection is subject to decision/outcome of O.A. NO. 4492/1993 filed by Mohinder Pal Soni & others which was pending before CAT Chandigarh Bench against cancellation of their regular selection (which was dismissed subsequently) and further workman was directed to report the office of management for completion of further formalities such as medical examination, Security Deposit, crash training on or before 28.06.1993. After medical examination, security deposit, declaration workman was deputed for one month Training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including the workman for the appointment to the post of Conductors against suspension / leave vacancy on purely temporary basis in pay scale ₹ 950-1800 (with initial start of ₹ 1,000/-) plus usual allowances from time to time and it was first time mentioned in the appointment letter that appointment is against suspension/leave vacancy without mentioning any specific period and the workman joined as per appointment letter and continuously working with the management but his services were disengaged on 22.04.1994 on the ground that on consequent upon re-instatement of the under suspension Conductors, the services of the following temporary Conductors, who were appointed against suspension vacancies are hereby discontinued with immediate effect being no longer required. The workman along with other filed O.A. No. 1000/ PB/1994 before CAT Chandigarh challenging the termination on the ground that their appointment was regular after following the procedure under the rules and was against regular after following the procedure under the rules and was against regular vacancies available with management but O.A. No.1000/1994 was dismissed by the CAT Chandigarh on the ground that as per appointment letter dated 15.10.1993 their appointment was temporary was also upheld by the Hon'ble High Court and Hon'ble Supreme Court of India. The workman and his colleagues has come to

know in the month August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and period was extended from time to time and also made appointment to the posts of Conductors in subsequent years without affording any opportunity to the workman who was the retrenched employee of the management and therefore the workman along with other six persons made application dated 23.08.2018 under RTI Act for seeking information under RTI Act regarding appointments made for the posts of the Conductors from 01.05.1994 to 20.08.2018 and the workman received reply dated 11. 12.2018 from the management under RTI which shows 40 Conductors were given regular appointment in 2000, 240 Conductors were given regular appointment in 2016, but without giving preference and opportunity to the workman at the time of making aforesaid appointments as provided in Section 25-H of the ID Act. The management intentionally did not give reply to the appointment made in December 1998 of 33 conductors on contractual basis, some of them were made regular and appointed of 19 posts of Conductors which was made on regular basis made in year 2001 *vide* Advertisement No.2/ECC/ECD/CTU/2001 and last date to receive the application was 27.08.2001 at 3 P.M.

The workman who had also worked as Conductor from 15.10.1993 to 22.04.1994 with management and was retrenched due to non availability of work and vacancies of Conductors but management while making the appointments for the posts of Conductors in December 1998 on 89 days on contractual basis and making regular appointment to the posts of Conductors in subsequent years in 2000, 2001, 2014 and 2016 without giving opportunity to the workman has violated Section 25-H of the ID Act. The management had also violated Rule 77 of Industrial Disputes (Central) Rules, 1957 regarding maintenance of seniority list of retrenched workmen in the particular category according to their service and further management has violated Rule 78 of Industrial Disputes (Central) Rules, 1957 regarding Re-employment of retrenched workmen wherein procedure has been prescribed for re-employment of the retrenched workmen which was mandatory for the management to follow before filling up the future vacancies. The workman, who was retrenched employee from the management and was retrenched due to non availability of work and vacancies of the Conductors. The appointment were made to the post of Conductors on contractual basis for the period of 89 days basis initially in December 1998 extended time to time and when regular selection and appointments were made subsequently to the posts of Conductors in the year 2000, 2001, 2014 and 2016 without affording opportunity to the workman, the management has denied opportunity to him and has violated Section 25-H of ID Act and action of the management amounts unfair labor practice and thus management also violated Section 25-T of the ID Act and thus the workman is entitled firstly to reinstatement as conductor from December 1998 along with consequential benefits from the date 33 conductors were appointed on contractual basis initially period of 89 days basis which was extended from time to time and made regular subsequently by the reinstatement as conductor from the date of regular appointments were made to the post of conductors in the year 2000, 2001, 2014 and 2016. The name of the workman was registered with Regional Employment Exchange, Union Territory Chandigarh and when the management sent requisition for filling up the posts of Conductors on regular basis in the pay scale and the name of workman was sponsored by the Employment Exchange to the management for the recruitment to the post of Conductors and the management given information regarding regular appointment to the Regional Employment Exchange, the name of the workman was deleted from the register of the Employment Exchange. Had the management informed to the employment exchange that appointment which was being made to the posts of Conductors was not regular then his name would not have been deleted from the register of the employment exchange and his name would have been sponsored to the subsequent regular appointment made in the year 2000, 2001, 2014 and 2016. His name would have been sponsored to any other Government job after his retrenchment. The workman is unemployed from the date of his retrenchment and is not gainfully employed anywhere from the date of his retrenchment. Ultimately, it is prayed that the workman be reinstated into service along with consequential benefits firstly from when 33 conductors were appointed on contractual basis initially for a period of 89 days and were allowed

to continue from time to time and later on made regular by management without affording opportunity to the workman and secondly alternative relief of reinstatement along with consequential benefits be given to the workman from the date of subsequent regular appointments were made in the year 2000, 2001, 2014 and 2016 on regular basis to the post of Conductors without giving opportunity to the workman.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the present claim of the workman is badly time barred as the same relates to the events happened about 28 years back. The workman was sponsored by the Employment Exchange, Union Territory Chandigarh for recruitment to the post of Conductor as demanded by the management in the year 1993 so the employment exchange is necessary party in the instant demand notice. On merits, it is pleaded that since the appointments of 33 Conductor and 35 Drivers for 89 days on contractual basis in December 1998, if so made, was very old so despite of best possible efforts made by the management the record is not traceable. Till the year 2000 the appointments made by the management was made through the employment exchange and management had to select the candidate by following the due processes from the list provided by the employment exchange so the employment exchange is the necessary party to answer why the name of the workman was not forwarded to the management for consideration of employment in the year 1998. The appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 was made through the public advertisement in the leading newspapers and on the official website of Chandigarh Administration. The averments made regarding management intentionally did not given the reply to the RTI regarding appointment in the year 1998 and 2001 is beyond the jurisdiction of this Hon'ble court as if the workman was aggrieved with the information provided under RTI Act, he must approach to the Appellate Authority appointed under RTI Act, 2005 or to the Hon'ble CIC, New Delhi. The workman had worked as Conductor from 15.10.1993 to 22.04.1994 with the management and his services were discontinued with immediate effect being no longer required. As appointments, if so made, in the year 1998 and 2000 were made from candidates sponsored by the Employment Exchange, U.T., Chandigarh, after taking interview by the management whereas the appointments made in the year 2004 and 2016 were advertised through public notice in the leading newspapers and on the official website of the Chandigarh Administration as well but the workmen were never applied for the same. The management never violated Section 25-H of the ID Act as the same will be applicable to all the retrenched workmen who have been in continuous service for not less than one year. Also, the preference shall be confined to such workmen as would be able to establish that they had worked for a period of one year with or without a break, prior to their termination. In the instant case, the workman has not completed his 240 days of service with or without break with the respondent management as the services of the workman were discontinued by the respondent management after 190 days only. The workman registered his name with the Employment Exchange, Union Territory, Chandigarh as they were sponsored by employment exchange in the year 1993 against the vacancies available with the management. The workman was not covered under Section 25-F & 25-H of the ID Act. The information given to employment exchange that the appointment which is being made to the post of conductor was not regular is not traceable despite of best possible efforts made by the management as the same relates to the events happened about 28 years back. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed:-

1. Whether the workman is entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management ? OPW
2. Whether the claim of the workman is time barred ? OPM
3. Whether the claim of the workman is bad for non-joinder of necessary party ? OPM
4. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Daljit Singh - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No.1 to 3 :

7. Onus to prove issue No.1 was on the workman whereas onus to prove issue No. 2 & 3 was on the management but all these issues are taken up together for the sake of convenience to avoid repetition. In support of his case, the workman examined himself as AW1 and deposed that on the requisition sent by the management for filling the regular posts of Conductors in the year 1993, his name was sent by the Employment Exchange, Union Territory Chandigarh and he was interviewed along with others. Thereafter in June 1993 selection was issued to him stating that he has been selected for the post of the Conductor in the pay of ₹ 950-1800, subject to decision of OA No.492/1993 pending before the Hon'ble Central Administrative Tribunal, Chandigarh Bench and directing him to complete formalities as medical examination, security deposit, crash training on or before 28.06.1993. He also deposed that after completion of all the formalities he was deputed for one month training in the month of August 1993 and thereafter appointment letter dated 15.10.1993 was issued to 20 candidates including himself stating that his appointment is against suspension / leave vacancy on purely temporary basis in the pay scale ₹ 950-1800, which was different condition than the condition imposed in the selection letter. His services were terminated / retrenched on 22.04.1994 on the ground no longer required on consequent upon reinstatement of the under suspension Conductors. He along with others filed OA No.1000-PB/1994 before the CAT, Chandigarh Bench, which was dismissed. He further deposed that he and his other colleagues came to know in the month of August 2018, the management had appointed 33 Conductors and 35 Drivers for 89 days on contractual basis in December 1998 and they were allowed to continue from time to time and thereafter made regular for the post of Conductors without giving opportunity to him. In reply dated 11.12.2018 to the application dated 23.08.2018 under RTI Act, the management had admitted 40 Conductors in the year 2000, 240 Conductors in the year 2014 and 108 Conductors in the year 2016 were given regular appointment and willfully & intentionally not given reply to the appointment made in December 1998 as it is evident from judgment dated 30.01.2002 passed by the CAT, Chandigarh that 33 Conductors were appointed in December 1998. *Vide* letter dated 18.05.1998 permission regarding engaging Conductors from Chandigarh Administration was sought. The management while making recruitment / appointment for the post of Conductors has violated Section 25-H of the ID Act and also violated Rule 77 & 78 of the Industrial Disputes (Central) Rules, 1957. He further deposed that on the representation made by him and others, Chandigarh Administration has ordered inquiry with regard to posts of Conductors filled up by the management in the year 1993, in which it is stated by the Inquiry Officer that retrenched Conductors were duly selected by the committee and appointment after following the due procedure prescribed but they have been retrenched after short spell due to non-availability of vacancies so they be adjusted against future vacancies. He also deposed that since the management sent letter to the Employment Exchange for filling up regular posts so after sponsoring the name of himself to the management and consequent upon selection his name might have been deleted from the register of Employment Exchange due to this reason his name was not sponsored in the year 1998 and 2000. In May 1993 Employment Exchange sent a list of 400 candidates to the management out of which 90 Conductors including himself & other were selected but when in the year 1998 and 2000 when appointment for the post of Conductors were made on contract basis and regular basis no requisition was sent to the Employment Exchange and the Conductors were selected and appointed from old list of 400 Conductors received in the year 1993 without affording opportunity to him.

8. Learned representative for the workman has argued that the name of the workman was sponsored by the Employment Exchange, Union Territory Chandigarh to the management for recruitment to the post of Conductor in the year 1993 and he was selected for the post of Conductor and he was directed to report the office of the management after necessary formalities on or before 28.06.1993 and it was for the first time mentioned in the appointment letter that the appointment is against suspension / leave vacancy without mentioning any specific period. It is further argued that the workman and his colleagues came to know that in August 2018 that the management had appointed 33 Conductors and 35 Drivers for 89 days in December 1998 and period was extended from time to time but the management had not given any opportunity to the workman who was retrenched employee of the management. He has placed on record information sought under the Right to Information Act with regard to it. Hence, the respondent has violated the provisions of Industrial Disputes (Central) Rules, 1957. Thereafter the post of Conductor in the year 2000, 2001, 2014 & 2016 was also filled by the management without affording opportunity to the workman in violation of Section 25-H of the ID Act which amounts to unfair labour practice. He placed reliance of citation **Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh, 2019(1) SCC (L&S) 491** and prayed for reinstatement of the workman along with consequential benefits from the date subsequent appointments made by the management in the year 2000, 2001, 2014 & 2106.

9. On the other hand, learned Law Officer for the management has examined Shri Daljit Singh - Senior Assistant as MW1, who deposed that since the instant demand notice relates to events happened around 28 year back so the complete record is not traceable. As per the minute record available in the office, the workman was sponsored by the Employment Exchange, Union Territory Chandigarh for the recruitment to the post of Conductor in the year 1993. The workman was appointed as Conductor vide order dated 15.10.1993 against suspension purely on temporary basis in the pay scale of ₹ 950-1800 with the initial start of ₹ 1,000/- plus usual allowance as admissible from time to time. The selection of the workman was made subject to the outcome of OA No.492/CH/1993 before the Hon'ble Central Administrative Tribunal, Chandigarh Bench, Chandigarh. Consequent upon the reinstatement of under suspension Conductors the services of the workman was ordered to be discontinued with immediate effect vide order dated 22.04.1994, which is within 190 days of selection order dated 18.06.1993. The workman had not completed 240 days of regular service with the management. He further deposed that the management appointed 33 Conductor and 34 Drivers for 89 days on contractual basis in December 1998 and period was extended for time to time. Till the year 2000 the appointments made by the management was through the Employment Exchange and the management has to select the candidates from the list provided by the Employment Exchange. The appointments made in the year 2014 and 2016 were advertised through public notice in the newspapers and on official website of the Chandigarh Administration as well.

10. Learned Law Officer for the management has argued that the workman is not entitled for the relief, as prayed for, as he was appointed as Conductor vide order dated 15.10.1993 against suspension / temporary basis subject to outcome of OA No.492/CH/1993 and consequent upon reinstatement of under suspension Conductors the services of the workman, being temporary basis, was ordered to be discontinued with effect vide order dated 22.04.1994. It is further argued that the workman had not completed 240 days of service so provisions of Section 24-F & 25-H of the ID Act are not applicable in the present case. He has placed reliance on citations **Association of Chemical Workers Versus AT Alaspur, 1998(3) LLJ (Supp.) 800 (SC); State of Gujrat Versus Ramesh Mopabhai Rathod, 2004 LLR 255 (Gujarat) and State Bank of Bikaner & Jaipur Versus Union of India, 2007 LLR 222 (SN) (Jharkhan)**

11. It is further argued that the present claim is hopelessly time barred and no reasonable justification has been putforth for not filing the claim statement earlier. The present claim is bad for non-joinder of necessary parties the workman had not made Employment Exchange as necessary party. Moreover, the

record of the present case is old one and appointments in the years 2014 & 2016 were made through advertisement in newspaper but the workman had never applied for the same. He prayed for dismissal of the claim of the workman.

12. After giving my careful consideration the rival contentions of both the parties. It is admitted case of the parties that the workman was appointed *vide* order dated 15.10.1993 on purely temporary basis and he remained in service till 22.04.1994. He was disengaged on 22.04.1994 on the ground that consequent upon the reinstatement of the under suspension Conductors, the services of the temporary Conductors are discontinued with immediate effect.

13. The workman had proved application dated 23.08.2018 under Right to Information Act Exhibit 'AW1/1'; information supplied under Right to Information Act *vide* letter dated 11.12.2018 Exhibit 'AW1/2'; letter dated 18.05.1998 regarding filling up the post of Drivers & Conductors on contractual basis Exhibit 'AW1/3'; representation to the Home Secretary, Chandigarh Administration against order of discontinuation of service Exhibit 'AW1/4'; newspaper cutting Exhibit 'AW1/5'; advertisement for recruitment of Bus Drivers and Conductors Exhibit 'AW1/6' and appointment letter dated 02.12.1998 of Shri Hans Raj as Bus Conductor on contract basis Exhibit 'AW1/7' whereas the management had proved appointment letter dated 18.06.1993 Exhibit 'MW1/1'; appointment order dated 15.10.1993 Exhibit 'MW1/2'; order dated 22.04.1994 regarding discontinuation of services of temporary Conductors Exhibit 'MW1/3' and advertisement made in the year 2016 for appointment of Bus Conductors on regular basis Exhibit 'MW1/4'.

14. As per record it is not denied by the management that appointment of 33 Conductors and 35 Drivers were made on contractual basis in December 1999 and their period was extended from time to time and 19 posts of Conductors was also made on regular post in the year 2001 *vide* advertisement No.2/ECC/ECD/CTU/2001. Thereafter the regular appointments were made in the year 2000, 2001, 2014 & 2016. The main bone of contention between the parties is regarding reemployment of the workman whereas the management is vehemently argued that the workman is not entitled for reemployment / reinstatement as the workman had approached the Court after a long delay so claim is badly time barred and secondly he has not made party to the Employment Exchange, Union Territory Chandigarh, who is to consider the name of the workman for the recruitment.

15. It is very much clear that the workman had approached the court with more than 28 years whereas the management had already published the advertisement in leading newspapers and on the official website of Chandigarh Administration for the appointment of 240 Conductors in 2014 and 108 Conductors in the year 2016 but the workman had never applied to the said posts. Hence from the year 1994 the workman kept mum and has never approached the management as well as Employment Exchange to enter their name for consideration of reemployment rather he had also not made party to the Employment Exchange, Union Territory Chandigarh, who can better tell why the name of the workman deleted or not carry-forwarded for further reemployment. Now after lapse of 28 years, as per reply of the management they are not in a position to bring the record being old one. Although there is no time limit to make reference under Section 10 of the ID Act but there must be reasonable justification under for the delay. In this regard reliance is made on citation titled as **Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)** wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the

order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent."

Further, similar views have been observed in citation **Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court**. In the present case in hand, no reasonable justification has been put forth by the workman for delay of more than 28 years. The workman is simply relying on citation **Management of the Barara Cooperative Marketing-cum-Processing Society Limited Versus Workman Pratap Singh (supra)** but had not made any efforts for such long time.

16. In the light of discussion made above, it is held that the claim of the workman is hopelessly time barred and bad for non-joinder of necessary party i.e. Employment Exchange, Union Territory Chandigarh so the workman is not entitled for reinstatement / reemployment along with consequential benefits from the date of subsequent appointments made by the management. Accordingly, issue No.1 is decided against the workman and in favour of the management whereas issue No. 2 & 3 is decided in favour of the management and against the workman.

Relief :

17. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 10th February, 2022.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

Secretary Labour,
Chandigarh Administration.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Order

The 31st March, 2022

No.13/1/9853-HII(2)-2022/4781.—Whereas the Central Government is of the opinion that an Industrial dispute exists between the President/ General Secretary, Educational Institutions Karamchari Union (REGD.), Head Office Cheema Bhawan, Sector 30-B, Chandigarh AND The Management(s) (1) M/s Baba Mal Dass Charitable Trust (through its Managing Trustee), Sector 63, Chandigarh and (2) M/s the BMD Public School, (through its Principal), Sector 63, Chandigarh regarding the matters hereinafter appearing;

And whereas the Central Government considers it desirable to refer the dispute for adjudication;

Now, therefore in exercise of the powers conferred by clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, read with Government of India, Ministry of Labour's Notification No. S-11025/9/96-IR (PL) dated the 24th February, 1997, the undersigned hereby refers the matter specified below to the Industrial Tribunal and Labour Court, Union Territory, Chandigarh for adjudication :—

"Whether the demand raised in the demand notice dated 11.10.2018 by the President/ General Secretary, Educational Institutions Karamchari Union (REGD.), Head Office Cheema Bhawan, Sector 30-B, Chandigarh AND the Mangements of (1) M/s Baba Mal Dass Charitable Trust (through its Managing Trustee), Sector 63, Chandigarh and (2) M/s the BMD Public School, (through its Principal), Sector 63, Chandigarh are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any?"

SECRETARY LABOUR,
Chandigarh Administration.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Order

The 31st March, 2022

No.13/1/9854-HII(2)-2022/4776.—Whereas the Central Government is of the opinion that an Industrial dispute exists between Sh. Pala Ram and 15 others (S/Sh./Smt. Prithvi Singh, Ram Kishan, Hardeep Singh, Rajesh Kumar, Suresh Kumar, Surinder, Savitri Devi, Daya, Satnarayan Paswan, Pardeep Kumar, Arjun, Lalit, Sushma, Sarita, Rishi Dayal) AND The Management(s) (1) The Markfed, Plot No.4, Sector 35B, Chandigarh (through its Managing Director), (2) Innovision Ltd., Corporate Block 68/73, Sukharli, M.G. Road, Block C, Sector 17, Gurgaon, Haryana-122001, (3) Innovision Ltd., Regional Office, SCO No. 366, Top Floor, Sector 70, Mohali- 160071 regarding the matters hereinafter appearing;

And whereas the Central Government considers it desirable to refer the dispute for adjudication;

Now, therefore in exercise of the powers conferred by clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, read with Government of India, Ministry of Labour's Notification No.S-11025/9/96-IR (PL) dated the 24th February, 1997, the undersigned hereby refers the matter specified below to the Industrial Tribunal and Labour Court, Union Territory, Chandigarh for adjudication :—

"Whether the demand raised in the demand notice dated 20.04.2019 by Sh. Pala Ram and 15 others (S/Sh./Smt. Prithvi Singh, Ram Kishan, Hardeep Singh, Rajesh Kumar, Suresh Kumar, Surinder, Savitri Devi, Daya, Satnarayan Paswan, Pardeep Kumar, Arjun, Lalit, Sushma, Sarita, Rishi Dayal) AND the Mangements of (1) The Markfed, Plot No.4, Sector 35B, Chandigarh (through its Managing Director), (2) Innovision Ltd., Corporate Block 68/73, Sukharli, M.G. Road, Block C, Sector 17, Gurgaon, Haryana- 122001, (3) Innovision Ltd., Regional Office, SCO No. 366, Top Floor, Sector 70, Mohali- 160071 are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any?"

SECRETARY LABOUR,
Chandigarh Administration.

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